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S ..me Court, U.S.
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No. _____ 971621 MAR 30 1998

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In The
Supreme Court of the United States

October Term, 1998

ELINOR HALPERN
Pro Se Petitioner

V.

BRISTOL BOARD OF EDUCATION
Respondent

On Petition For Writ of Certiorari To The
Supreme Court of the State of Connecticut

PETITION FOR A WRIT OF CERTIORARI

Elinor Halpern
Pro Se Petitioner
77 Griswold Drive
West Hartford, CT 06119
(860) 236-2766

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95 pp

QUESTION PRESENTED

DID THE CONNECTICUT SUPREME COURT ERR IN AFFIRMING THE JUDGMENT OF THE TRIAL COURT, AND THEREBY DENY THE PETITIONER, A TENURED TEACHER WITH A PROTECTED PROPERTY INTEREST, DUE PROCESS OF LAW IN REGARD TO THE TERMINATION OF HER EMPLOYMENT BY THE RESPONDENT BOARD OF EDUCATION?

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OPINION BELOW

The opinion of the Supreme Court of the State of Connecticut is reported in Halpern v. Bristol Board of Education, 243 Conn. 435, 703 A.2d 1144 (1997). See Appendix, infra.

JURISDICTION

The judgment and opinion of the Supreme Court of the State of Connecticut was released on December 30, 1997. The jurisdiction of this Court is invoked under Title 28 U.S.C. §1257(a). This petition is timely pursuant to Title 28 U.S.C. §2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV of the United States Constitution provides in relevant part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . .

The petitioner was employed under an employment contract pursuant to Connecticut General Statute §10-151.

See Appendix.

STATEMENT OF THE CASE

This petition is the culmination of the petitioner's nearly twenty-five (25) year struggle for due process of law against the Board of Education for the City of Bristol, Connecticut (hereinafter "board"). This petition for a writ of certiorari stems from the Connecticut Supreme Court's decision; Halpern v. Bristol Board of Education, 243 Conn. 435, 703 A.2d 1144 (1997)(hereinafter "Halpern II"); to affirm the judgment of the Superior Court for the Judicial District of Hartford-New Britain at Hartford (McWeeny, J.) dismissing the petitioner's administrative appeal challenging her termination as a tenured teacher. The Superior Court's decision was reported in Halpern v. Board of Education of the City of Bristol, 45 Conn.Sup. 171, ___ A.2d ___ (1996). See Appendix. The petitioner's case dates back to 1974, and many of the salient facts are set forth in three other reported

cases, Lee v. Board of Education, 181 Conn. 69, 434 A.2d 333 (1980)(hereinafter "Lee"); and Halpern v. Board of Education, 231 Conn. 308, 649 A.2d 534 (1994)(hereinafter "Halpern I").[1]

On April 1, 1974, the petitioner, Elinor Halpern, formerly Elinor Lee, a tenured teacher at the Greene-Hills School in Bristol, Connecticut, was notified by the superintendent of the Bristol schools that the respondent board was considering terminating her employment pursuant to Connecticut General Statute §10-151 (Rev. 1973) for alleged inefficiency and insubordination against reasonable rules of the board.

On August 21, 1974, the board held a hearing at which the plaintiff was present and represented by counsel.

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[1] In addition, the petitioner also filed for a writ of mandamus in the Connecticut Superior Court, which was dismissed. The dismissal was later appealed to the Connecticut Supreme Court as reported in Halpern v. Bristol Board of Education, 196 Conn. 647, 495 A.2d 264 (1985).

The hearing was held before three members of the board, which, at the time, was comprised of five members. A transcript was made of the hearing and the two absent members reviewed that transcript. On August 30, 1974, at a "special emergency" meeting of the board, four members of the board voted to terminate the petitioner's employment.

The petitioner appealed the board's decision through the trial courts to the Connecticut Supreme Court. On appeal, the Court held that the termination procedure did not comply with minimal due process requirements. Lee, supra, 181 Conn. at 84. In its decision, the Court held that the petitioner was entitled under due process of law to a written statement of the board's decision, such a statement to include the reasons underlying the board's decision and the evidence upon which the board relied in reaching its conclusions. Id. The petitioner's case was then remanded "with direction to return the case to the board for further proceedings consistent

with [its] opinion." Id.

In response, the board chose not to hold a new hearing regarding the petitioner's employment. Rather, on November 5, 1980, the board, now comprised of entirely new members, simply issued a set of "findings and conclusions" based on a reading of the 1974 transcript. In its findings, the board claimed that its "findings of fact and reasons . . . constitute the basis for the decision of the Bristol Board of Education to terminate the teaching contract of Elinor Lee." Thereafter, the board reaffirmed the termination of the petitioner's employment contract.

Pursuant to Connecticut General Statute §10-151 (Rev. 1980), the petitioner again appealed the board's action, again ultimately reaching the Connecticut Supreme Court. In a decision reported on November 8, 1994; Halpern I, 231 Conn. 308, 649 A.2d 534 (1994); the Connecticut Supreme Court ruled in the petitioner's favor, and remanded the case

to the respondent board for further proceedings to be held in conformity with specific procedures set forth in the opinion. Halpern I, supra, 231 Conn. at 308. The Court reasoned that due process of law required that the board first prepare a "proposed final decision," then afford the petitioner an opportunity to respond to the proposal by filing exceptions and presenting oral argument, and thereafter, "[a]fter due consideration of these responses, the board is then authorized to adopt a final decision . . . ." Id., at 315.

After the Court's remand, the board met on January 25, 1995, generally discussed the petitioner's case, and concluded that valid grounds existed to terminate the petitioner's employment. The board further agreed that the chairman and the board's attorney would draft the proposed findings and conclusions. In addition, counsel for the board informed the members that after the petitioner made her presentation, the board members were to deliberate on the

entire record, including the petitioner's arguments, and then either amend or adopt the proposed findings and conclusions. See Appendix, infra. On February 23, 1995, the petitioner and the other members of the board were provided with copies of the "Proposed Findings and Conclusions," and a hearing was scheduled--ostensibly in an attempt to facially comply with the Connecticut Supreme Court's 1994 mandate.

On May 8, 1995, the board held a "special meeting" at which the petitioner attended and presented a substantive oral rebuttal to the board's proposed findings and conclusions. At the commencement of this hearing, around 7:15 p.m., the petitioner formally requested that the proceedings be recorded by stenographic or mechanical means, as was the case in 1974, and that a copy of said transcript be furnished to her in accordance with the provisions of Connecticut General Statute §10-151(d) (Rev.

to Jan. 1995). The board denied this request. The petitioner also stated that she could not fairly and adequately respond to the board's proposed findings and conclusions because the board did not cite to any specific points of evidence or examples of misconduct from the record in the performance of her teaching duties, but instead merely set forth vague, non-specific allegations of misconduct. The petitioner further noted that the board's proposed findings and conclusions did not contain references to specific dates, times, or places of alleged misconduct from the record as was envisioned by the Connecticut Supreme Court's decision in Halpern I, supra, in which the Court required the board to give a fair summary of the evidence that it relied upon in its proposed findings and conclusions. Thereafter, the petitioner proceeded with her unrecorded oral presentation.

After little more than one hour of the petitioner's presentation, the proceeding was recessed between 8:50 p.m.

and 9:05 p.m. After the proceeding was reconvened, the chairman *sua sponte* announced that the proceeding would end promptly at 10:00 p.m. -- thereby affording the petitioner only fifty-five (55) minutes to fully complete her presentation. Through counsel, the petitioner objected to this previously unannounced limit on her rebuttal and argued that she should be allowed additional time and dates, if necessary, to fairly respond to the board's allegations. The petitioner then continued with her oral rebuttal. Thereafter, at approximately 10 p.m., the petitioner was interrupted, permitted to briefly conclude her sentence, and then silenced by the board. The petitioner's requests for a single additional hour to conclude her presentation, or in the alternative, an additional date, were summarily rejected by the board. The chairman then called for a vote by the board on the proposed findings. The board acted with predisposed haste, and without any comment, discussion, deliberation, or even

acknowledgment of the petitioner's oral presentation. The board immediately voted to adopt the proposed findings and conclusions and to terminate the petitioner's employment. On or about May 22, 1995, the board issued its final purported findings and conclusions, which it claimed constituted sufficient reasons for the termination of the petitioner's teaching contract. The board's proposed and final findings and conclusions are **identical**. See Appendix.

Pursuant to Connecticut General Statute §10-151, the petitioner thereupon appealed the decision to the Superior Court for the Judicial District of Hartford-New Britain. Halpern v. Board of Education of the City of Bristol, 45 Conn.Supp. 171 (1996). Pursuant to Connecticut General Statute §10-151(f), the trial court permitted the petitioner to file an affidavit to supplement the record by indicating which points she was unable to address on May 8, 1995 because the respondent board cut her off in mid-argument. See

Appendix. At oral argument before the court on September 24, 1996, the petitioner, through counsel, expressly argued that the board's refusal to record the petitioner's hearing violated her right to due process of law.

Thereafter, on or about October 29, 1996, the trial court filed a written memorandum of decision, subsequently reported in 45 Conn.Supp. 171 (1996). In its decision, the trial court rejected the petitioner's claims and found that the respondent had sufficient cause to terminate her. In addressing what it considered the board's "new" conclusions, the trial court rejected the petitioner's claim that the proposed findings and conclusions were not sufficiently specific, and held that the board's findings and conclusions satisfied constitutional due process requirements. The trial court further concluded that the petitioner's decision to present an oral rebuttal, rather than a written decision, suggested that her claims were merely procedural in nature. As such, the trial

court apparently did not consider the petitioner's substantive claims which formed the bulk of her rebuttal presentation. Further, the trial court rejected the petitioner's argument that Connecticut General Statute §10-151 required the May 8, 1995 proceeding to be transcribed. Instead, the trial court ruled that the "complete transcript" requirement in the statute refers only to testimony before the board that heard evidence in the case. The trial court then held that the petitioner had failed to demonstrate any prejudice from the board's failure to transcribe the proceeding. Finally, the trial court also rejected the petitioner's claim that the board was unfairly biased against her.

In response, the petitioner appealed to the Connecticut Supreme Court. Halpern II, supra. In a three and one half page decision, the Connecticut Supreme Court adopted the decision of the trial court and affirmed the court's judgment. Id. Now, after nearly twenty-five years,

the petitioner, Elinor Halpern, turns to this Court as the final arbiter of fairness seeking the redress of her injuries as a result of the respondent's unconstitutional deprivation of her property interest in a tenured teaching position. The petitioner now requests that this Court review the judgment of the Connecticut Supreme Court with respect to the denial of her federal constitutional right to due process of law under the Fourteenth Amendment.

REASONS FOR GRANTING THE PETITION

The Due Process Clause provides that certain rights -- life, liberty, and property -- cannot be deprived unless through constitutionally adequate procedures. U.S. Const., Amend. XIV. As such, the petitioner's federal constitutional claim depends upon her having a property right in her continued employment. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985); Board of Regents v. Roth, 408 U.S. 564, 576-78 (1972). Once she acquires a protected

property right, the state, or its agent, cannot deprive her of this right without due process of law. Goss v. Lopez, 419 U.S. 565, 573-74 (1975). This Court has held that property interests are not created by the constitution itself; rather, "they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law . . . ." Board of Regents, supra, 408 U.S. at 577. Under Connecticut law, a tenured teacher, who is given by statute the right to continued employment, i.e., tenure, acquires a property right that is entitled to protection under the due process clause of the fourteenth amendment to the United States Constitution. Sekor v. Board of Education, 240 Conn. 119, 129 (1997); Petrowski v. Norwich Free Academy, 199 Conn. 231, 506 A.2d 139 (1986); Lee, supra, 181 Conn. at 72. As such, it is well settled in **this** case that the petitioner has a property interest that is protected by due process of law. Id. The mere fact that the petitioner's

protected interest flows from a state statute does not modify the scope of the federal protections. This Court has repeatedly held that "'minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.'" Cleveland Board of Education, supra, 470 U.S. at 541, *quoting* Vitek v. Jones, 445 U.S. 480, 491 (1980); *see also* Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1982).

As an agency of the state, the Bristol Board of Education is a creature of statutory law and therefore possesses only those powers specifically granted to it by the legislature. Light v. Board of Education, 170 Conn. 35, 43, 364 A.2d 229 (1975); Herzig v. Board of Education, 152 Conn. 144, 150, 204 A.2d 827 (1964); *see also* LaCroix v. Board of Education of City of Bridgeport, 2 Conn. App. 36,

475 A.2d 1110 (1984).. As a statutory entity, the Board cannot deviate from its enumerated powers in an *ultra vires* fashion. In fact, to the contrary, the respondent is always required to adhere to statutory, as well as judicial, rules of procedure to ensure fundamental fairness and reviewability of it's decisions.

A. The Allegations in the Board's Proposed Findings Were Not Specific Enough.

The petitioner submits that the Connecticut Supreme Court erred in affirming the decision of the trial court with regard to the specificity of the board's charges against the petitioner. In its decision, the trial court found that the board's proposed findings and conclusions were specific enough to safeguard the petitioner's due process rights. Halpern, supra, 45 Conn. Supp. at 185-86. However, the trial court, and subsequently the Connecticut Supreme Court, ignored the plain fact that one must be fairly apprised of the

allegations in order to meaningfully rebut them. A central tenant of due process of law is that a deprivation of a property interest must be proceeded by adequate notice. Cleveland Board of Education, supra, 470 U.S. at 541; Goldberg v. Kelly, 397 U.S. 254, 267 (1970); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). In Goldberg v. Kelly, 397 U.S. 254 (1970), this Court noted,

> [c]ertain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue . . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.

Goldberg, supra, 397 U.S. at 270.

Findings of fact have been required to include not

only the specific charges upon which a school board based its decision, but also **those essential facts** reported in the transcript of the proceedings which, in the board's judgment, support the charges. Laney v. Holbrook, 150 Fla. 622, 8 So.2d 465, 468-9 (1942), *appeal after remand*, 153 Fla. 728, 15 So.2d 748 (remand to make findings of fact with sufficient definiteness to advise accused as to what facts that board found sufficiently proven to substantiate the charges).

It is fundamental that before the property interest of a tenured teacher is terminated, due process of law mandates, at a minimum, timely and adequate notice to the teacher sufficiently detailing the reasons for the proposed termination. Goldberg, supra, 397 U.S. at 268. This Court has noted that a "tenured employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." Cleveland Board of Education, supra, 470

U.S. at 546, *citing to*, Arnett v. Kennedy, 416 U.S. 134, 170-71 (1974) (opinion of Powell, J.); Goss v. Lopez, 419 U.S. 565, 581 (1975). Herein, the petitioner addressed the board at the May 8, 1995 hearing, and cited the use of terms such as "numerous", "many", "several", "some", and "various" in the board's proposed findings of fact and conclusions. The petitioner indicated to the board that as a result of its use of the above-listed generalizations, its proposed findings and conclusions were not specific enough for her to adequately respond. The petitioner then asked the board to identify specific dates, times, and places from the record corresponding to the allegations. In response, the board's chairman refused to answer, or to permit the other board members to answer the petitioner's inquiries. As such, the "charge as framed did not furnish the teacher with **facts** upon which she could reasonably formulate a defense, since it did not indicate the **dates** or the **specific nature of the teacher's**

acts." Osborne v. Bullitt County Board of Education, 415 S.W.2d 607, 609-10 (Ct.App.Ky. 1967)(Emphasis added). Due process requires that the evidence used to prove the respondent's case must first be sufficiently disclosed so that the plaintiff has a fair opportunity for rebuttal. Goldberg, supra, 397 U.S. at 270.

In the instant matter, the board was required "to specify [the] evidence supporting the board's determination." Halpern I, supra, 231 Conn. at 314. Such an order serves to protect an individual from abuses of due process by ensuring a meaningful opportunity to respond. Further, the requirement of specificity protects an individual's right to judicial review. To be effective, judicial review requires decisions based upon substantial evidence and proper reasons -- not on surmise and conjecture. Lee, supra, 181 Conn. at 81-82. Under Connecticut law, a tenured teacher discharged for cause under General Statutes §10-151(b) is entitled, as a

matter of constitutional law, to a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon." Lee, supra, 181 Conn. 79. As the board's actions deprived the petitioner of due process of law, this Court should review the judgment of the Connecticut Supreme Court to ensure that the petitioner's federal rights are safeguarded.

B. The Respondent's Failure to Record the May 8, 1995 Hearing Violated The Petitioner's Right to Due Process of Law.

Likewise, the respondent's failure to provide for either stenographic or mechanical recording of the May 8, 1995 hearing violated the petitioner's right to due process of law. The respondent's refusal to provide a recording of the proceeding prevented the petitioner from perfecting the record. A complete and accurate record is essential to the preservation of the petitioner's due process right to a proper and thorough review by a court. It is axiomatic that in order

for a reviewing court to determine whether conclusions reached were in fact supported by evidence, the court must have a detailed and complete record of the proceedings before it. Absent such a record, the reviewing court would be unable to determine what evidence was relied upon to establish sufficient cause for termination under the statute. Tucker v. Board of Education, 177 Conn. 572, 576, 418 A.2d 933 (1979). The May 8, 1995 proceeding was the petitioner's mechanism for input in the decision-making process that affected her protected property interest. This forum was the petitioner's opportunity to respond, clarify, and rebut serious allegations. In light of the fact that the respondent's allegations were non-specific, the petitioner's comments are of particular importance to a reviewing court. The petitioner's rebuttal should have been preserved, similar to that of the 1974 hearing, and been made part of a perfected record. "Once the legislature has afforded a teacher

dismissed for cause the right to judicial review of the determination, it is for the courts to ensure that the right is meaningfully protected." Lee, supra, 181 Conn. at 83.

C. The Respondent's Arbitrary Restriction of the Petitioner's Presentation Violates Due Process.

The Connecticut Supreme Court erred in its determination that the Board did not violate the petitioner's due process rights by arbitrarily ending the petitioner's rebuttal argument. The notion that the petitioner's right to fairly and adequately respond to the charges against her could have been cut off at an arbitrary point offends well-established principles of due process of law. Pet v. Dept. of Health Services, 228 Conn. 651, 672, 638 A.2d 6 (1994)(opportunity to respond to a proposed final decision is a constitutional safeguard of the due process clause). "Arbitrary time limitations set in advance without regard to the variable latitude which may be reasonably necessary to

accomplish fairly the purposes [of the proceedings] . . . and with no apparent regard for the time which might reasonably be required in the particular circumstances . . . unreasonably restrict[s] that right . . . ." State of Connecticut v. Haskins, 188 Conn. 432, 447, 450 A.2d 828 (1982)(right to individual voir dire requires a reasonable amount of time to exercise the right). This Court has repeatedly held that an adequate and meaningful opportunity to be heard is a central principle of due process of law and fundamental fairness.

> An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for a hearing appropriate to the nature of the case.' Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). We have described 'the root requirement' of the Due Process Clause as being 'that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.' Boddie v. Connecticut, 401 U.S. 371, 379 (1971)(emphasis in original); see Bell v. Burson, 402 U.S. 535, 542 (1971).

Cleveland Board of Education, supra, 470 U.S. at 541-42.

Furthermore, this Court has held that the fundamental requisite of due process of law is a meaningful opportunity to be heard. This principle requires an "effective" opportunity to rebut allegations of misconduct by presenting oral argument. Goldberg v. Kelly, 397 U.S. 254, 267-68, 905 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

Herein, the respondent's imposition of a time limit on the petitioner's rebuttal presentation was not made until after the proceeding was commenced. Prior to the commencement of the proceeding, neither the respondent, nor the Connecticut Supreme Court, had in any way suggested that the petitioner's time would be limited. Not only did the petitioner, through counsel, object to the board's arbitrary imposition of a time limit on her presentation, but she also sought a continuance to complete her rebuttal. Each of her requests were summarily rejected by the respondent.

As a result of the board's actions, the petitioner only had an opportunity to rebut the charge of insubordination by contrasting the directives given regarding homework and after school help with the requirements of the board's own policy manual. In addition, the petitioner briefly touched upon the issue of credibility before she was cut off. Furthermore, the petitioner was completely prevented from addressing the three charges of inefficiency.

The lack of prior notice with regard to the time limit severely hampered the petitioner's opportunity to conduct a constitutionally effective rebuttal presentation. In direct contrast to the decision of the trial court, given the fact that the allegations were non-specific and that the proceeding was not transcribed or recorded, the board's arbitrary limit can only be viewed as having caused severe prejudice to the petitioner's ability to meaningfully respond. *See* In re Marriage of Goellner, 770 P.2d 1387 (Colo.App. 1989);

Tonkin v. Jackson County Merit Sys. Comm'n., 599 S.W.2d 25, 32-33 (Mo.App. 1980). Compliance with procedural due process requires that a hearing be held "in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976). Thus, the Connecticut Supreme Court erred in its determination that the respondent did not violate the petitioner's due process rights by arbitrarily terminating the petitioner's opportunity to rebut the charges against her.

D. The Respondent Was Unfairly Biased Against the Petitioner.

Due process of law also requires a fair hearing before an impartial tribunal. Gibson v. Berryhill, 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973); In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955); Wong Yang Sung v. McGrath, 339 U.S. 33, 45-46 (1950); *see also* Petrowski v. Norwich Free Academy, 199 Conn. 231, 234,

506 A.2d 139 (1986).

In the present case, the Connecticut Supreme Court committed error by affirming the trial court's finding that the respondent acted in an unbiased manner. It is clear that at the January 25, 1995 school board meeting, counsel for the respondent advised the members that after the petitioner presented her rebuttal case, the full board was to **discuss** and **deliberate** on the **entire** record, then amend or adopt the draft findings. The respondent's bias against the petitioner was clearly evident at the May 8, 1995 hearing, when at the conclusion of the petitioner's presentation, the respondent board immediately rendered its decision. The complete absence of any pre-vote discussion by the board -- even a cursory or superficial deliberation -- is conclusive evidence of a preordained decision to terminate the petitioner's employment. As the petitioner's fate was entirely predetermined, the board's findings and conclusions were not

the product of fair and good faith determinations as was envisioned by the due process clause. The presumption that public officials will discharge their duties in accordance with the law; State v. Board of School Directors of Milwaukee, 14 Wis.2d 243, 111 N.W.2d 198, 211 (Wis 1961), *cert. denied*, 370 U.S. 720, 82 S.Ct. 1574 (1962); is rebutted once evidence comes forward that the officials have "fixed and unchangeable opinion[s], or that in the deliberations of the board after hearing all the evidence, such opinion[s] dictated the result." Appeal of Flannery, 406 Pa. 515, 178 A.2d 751, 754 (1962). In such a case, the petitioner would be deprived of a fair and impartial hearing within the meaning of due process of law.

Here, the actions of the respondent board, by arbitrarily curtailing the plaintiff's oral presentation, refusing to grant her additional time to respond to the allegations against her, and voting to terminate her employment without

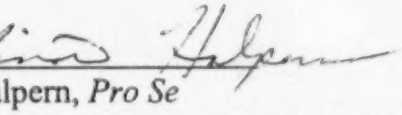
first meaningfully deliberating the merits of the case, indicates that the May 8, 1995 proceeding was a mere procedural formality. The board had clear bias against the petitioner and reached its result without affording her a meaningful opportunity to respond. The board's actions belittle the constitutional safeguards inherent in the due process clause. As such, the Connecticut Supreme Court erred when it affirmed the judgment of the trial court.

CONCLUSION

For all of the foregoing reasons, and in the interest of justice and fundamental fairness, the petitioner requests that this Court grant her petition for a writ of certiorari to review the judgment of the Connecticut Supreme Court.

Dated this 30th day of March, 1998

THE PETITIONER, ELINOR HALPERN

By: 

Elinor Halpern, *Pro Se*
77 Griswold Drive, West Hartford, CT 06119

APPENDIX TO PETITION

ELINOR HALPERN *v.* BOARD OF EDUCATION OF THE CITY OF BRISTOL (SC 15661)

Callahan, C. J., and Borden, Berdon, Palmer and McDonald, Js.

Argued November 4—officially released December 30, 1997

Procedural History

Appeal from a decision by the defendant terminating the plaintiff's employment as a tenured teacher, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and tried to the court, *Maloney, J.*; judgment for the defendant, from which the plaintiff appealed to this court, which reversed the trial court's decision and remanded the case to that court with direction to remand the case to the defendant for further proceedings; on remand, the defendant again rendered a decision terminating the plaintiff's employment, and the plaintiff appealed to the trial court, *McWeeny, J.*, which rendered judgment dismissing the appeal, from which the plaintiff again appealed. *Affirmed.*

Jon L. Schoenhorn, with whom, on the brief, was *Alice M. Sexton*, for the appellant (plaintiff).

Brian Clemow, with whom, on the brief, was *Karen H. Simmonds*, for the appellee (defendant).

Opinion

PER CURIAM. This case had its genesis more than twenty-three years ago. The facts and procedural history are recited in three previous opinions of this court as well as in the trial court's present memorandum of decision.[1] The plaintiff, Elinor Lee Halpern, was a

[1] *Lee* v. *Board of Education*, 181 Conn. 69, 434 A.2d 333 (1980); *Halpern* v. *Board of Education*, 196 Conn. 647, 495 A.2d 264 (1985) (see footnote 3 of this opinion); *Halpern* v. *Board of Education*, 231 Conn. 308, 649 A.2d 534 (1994); *Halpern* v. *Board of Education*, 45 Conn. Sup. 171, A.2d (1997).

tenured teacher employed by the defendant, the board of education of the city of Bristol (board). In 1974, the plaintiff's employment contract was terminated for cause by the board after a constitutionally sufficient hearing.[2] The board did not, however, issue a written decision, nor did it set out in writing the reasons for its decision or provide a written summary of the evidence upon which it relied. This court, on an appeal from a judgment of the Court of Common Pleas dismissing the plaintiff's appeal from the board's decision, concluded that the lack of a written decision containing the reason for the decision and a summary of the evidence relied upon constituted a due process violation. *Lee* v. *Board of Education*, 181 Conn. 69, 79, 434 A.2d 333 (1980). We, therefore, set aside the trial court's judgment and remanded the case with direction that it be returned to the board for further proceedings. Id., 84. The board thereafter met and reviewed the record. It affirmed the decision to terminate the plaintiff's employment and issued a statement in compliance with this court's mandate. On the plaintiff's subsequent appeal from the trial court's judgment affirming the board's decision, we concluded that the board's failure to hold another hearing, allowing the plaintiff an opportunity to rebut the board's findings and conclusions, was a violation of the plaintiff's right to due process. *Halpern* v. *Board of Education*, 231 Conn. 308, 649 A.2d 534 (1994).[3] We issued an explicit order detailing the requirements the board

[2] In *Halpern* v. *Board of Education*, 231 Conn. 308, 312, 649 A.2d 534 (1994), we reiterated our conclusions that the hearing itself was constitutionally sufficient, and that only the lack of an adequate written statement of findings and conclusions raised the issue of due process violations.

[3] During the intervening period between our decisions in *Lee* v. *Board of Education*, supra, 181 Conn. 69, in 1980 and in *Halpern* v. *Board of Education*, supra, 231 Conn. 308, in 1994, there was another appeal from the trial court's judgment dismissing, on the ground of a prior pending action, a separate action seeking a writ of mandamus and other relief. The trial court's judgment of dismissal was affirmed by this court. *Halpern* v. *Board of Education*, 196 Conn. 647, 495 A.2d 264 (1985).

was to follow on remand. Id., 314–15. The present appeal stems from the board's hearing held in compliance with that remand.

Pursuant to our order, the board adopted proposed findings and conclusions and provided a copy to the plaintiff. After properly notifying the parties, the board held a hearing to allow the plaintiff an opportunity to present a rebuttal. The board did not provide for recording or transcription of the hearing and, after allowing two hours for the plaintiff's rebuttal, the board terminated her argument. Upon seeking additional comments on the matter and hearing none, the board voted unanimously to adopt its proposed findings and conclusions. The plaintiff appealed from the board's decision to the trial court. In a lengthy memorandum of decision, the trial court affirmed the decision of the board. The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and General Statutes § 51-199 (c).

The four issues raised on this appeal are whether the trial court properly determined that: (1) the board was not required to provide for recording or transcription of the plaintiff's rebuttal argument pursuant to General Statutes (Rev. to 1995) § 10-151 (d) and (f); (2) the board's decision to terminate the plaintiff's oral argument after two hours was not unreasonable or prejudicial; (3) there was a sufficient factual basis in the record to support the board's findings; and (4) the plaintiff's claim of bias by the board is not supported by the evidence.

Our examination of the record, and our review of the briefs and arguments of the parties on appeal persuades us that the judgment of the trial court should be affirmed. The central issue of the constitutional adequacy of the plaintiff's opportunity to present a rebuttal

to the proposed findings and conclusions at a hearing before the board was resolved properly in the trial court's thoughtful and comprehensive memorandum of decision. *Halpern* v. *Board of Education*, 45 Conn. Sup. 171, A.2d (1997). Because that memorandum of decision fully addresses the arguments raised in the present appeal, we adopt it as a proper statement of the facts and the applicable law on those issues. It would serve no useful purpose for us to repeat the discussion contained therein. See *Molnar* v. *Administrator, Unemployment Compensation Act*, 239 Conn. 233, 235, 685 A.2d 1107 (1996); *Val-Pak of Central Connecticut North, Inc.* v. *Commissioner of Revenue Services*, 235 Conn. 737, 740, 669 A.2d 1211 (1996).

The judgment is affirmed.

ELINOR HALPERN *v.* BOARD OF EDUCATION OF THE CITY OF BRISTOL*

Superior Court Judicial District of Hartford-New Britain at Hartford File No. CV950551453

Administrative appeal; termination of employment of tenured teacher; appeal by plaintiff, tenured teacher, from decision by defendant school board to terminate her employment contract; whether defendant's termination of plaintiff violated her constitutional rights to due process; whether defendant's termination of plaintiff violated her rights under the Teacher Tenure Act (§ 10-151 et seq.); whether defendant's failure to provide plaintiff with verbatim transcript or its restrictions upon her presentation at termination hearing prejudiced her; whether record of termination proceeding reasonably supported defendant's findings and conclusion that plaintiff be terminated; whether defendant's termination decision was arbitrary, capricious, illegal, biased, made in bad faith, or an abuse of defendant's discretion; given extensive history of prior trial and appellate level proceedings, whether defendant's decision to terminate plaintiff violated mandate of state Supreme Court's remand order.

Memorandum filed October 29, 1996

Memorandum of decision in appeal from board of education. *Appeal dismissed.*

Jon L. Schoenhorn & Associates, for the plaintiff.

Shipman & Goodwin, for the defendant.

* Affirmed. *Halpern* v. *Board of Education*, 243 Conn. 435, A.2d (1997).

MCWEENY, J. This action is an appeal of the employing board of education's decision terminating the employment of a tenured public school teacher. The appeal is brought pursuant to General Statutes (Rev. to 1995) § 10-151 (f).[1] The defendant appellee Bristol board of education (board) initially voted to terminate the employment of the plaintiff appellant Elinor Halpern, previously known as Elinor Lee, on August 30, 1974. The board's termination decision was preceded by a General Statutes (Rev. to 1972) § 10-151 (b) termination hearing. The August 30, 1974 termination decision was appealed to the Court of Common Pleas which dismissed the plaintiff's appeal. On June 3, 1980, our Supreme Court reversed the lower court's decision and remanded the case with direction to return it to the board for further proceedings consistent with the Supreme Court's opinion. *Lee* v. *Board of Education*, 181 Conn. 69, 84, 434 A.2d 333 (1980). Such remand to the board was ordered by the Superior Court, the successor to the Court of Common Pleas.

Acting on the remand, on November 22, 1980, the board issued "findings and conclusion" based on the record of the 1974 § 10-151 (b) termination hearing. This decision of the board also was to terminate the tenured continuing teaching contract of the plaintiff.

The plaintiff appealed the November 12, 1980 decision to the Superior Court (Docket No. CV810253483) pursuant to § 10-151 (f) (Rev. to 1979). The Superior Court dismissed the plaintiff's appeal.

The plaintiff appealed the Superior Court decision to the Appellate Court. The appeal was transferred to the

[1] Subsection (f) of § 10-151 was amended and transferred to subsection (e) effective July 1, 1995. Public Acts 1995, No. 95-58, § 2. All references in this opinion to § 10-151 (f) are to the General Statutes as revised to 1995 unless otherwise indicated.

Supreme Court pursuant to the rules of appellate practice.

Our Supreme Court reversed the Superior Court's dismissal of the plaintiff's appeal. On November 8, 1994, the Supreme Court again directed that the case be returned to the board for further proceedings in accordance with the Supreme Court's more explicit instruction. *Halpern* v. *Board of Education*, 231 Conn. 308, 315, 649 A.2d 534 (1994). The Superior Court for the judicial district of Hartford-New Britain entered judgment and remanded the case to the board on January 3, 1995.

Following this remand judgment, the board and the plaintiff took the following actions.

On January 4, 1995, a letter was sent from the board's attorney to the board's superintendent outlining distribution of the transcript and exhibits from the plaintiff's 1974 hearing to current board members. Copies of the letter went to each board member outlining their obligation to review the materials from the 1974 hearing.

On January 5, 1995, a letter was sent from the board's attorney to the plaintiff's attorney outlining a procedure intended to comport with the Supreme Court mandate.

There is no record of a response by the plaintiff or by her attorney to the January 5, 1995 letter, other than in the minutes of the January 25 meeting indicating that the plaintiff, through counsel, had requested that the January 25 meeting be a public proceeding.

On January 13, 1995, the board disseminated notice of a special board meeting to address a personnel matter involving the plaintiff on January 25, 1995.

The board met on January 25, 1995 at a special meeting in public session. Attending the meeting were nine

members of the board, the board's attorney, the plaintiff, the plaintiff's attorney and the board's director of personnel. The minutes describe in pertinent part the purpose of the meeting. "Attorney Clemow explained that while the purpose of the meeting was to discuss the termination of employment of a former teacher in the Bristol Public Schools, the discussion would be held in public session at the request of Ms. Halpern, as conveyed through her attorney, John L. Schoenhorn. Attorney Clemow also stated that Attorney Schoenhorn had requested that the draft findings contemplated by the Connecticut Supreme Court decision be distributed to his client at the same time they are distributed to all of the members of the Board, so that he is permitted to comment or respond to them before the full Board votes on them. Accordingly, Attorney Clemow suggested that the draft findings be prepared by a single member of the Board, in consultation with counsel, then distributed to Ms. Halpern and the Board. After Ms. Halpern has an opportunity for input as contemplated by the Supreme Court, the full Board can then discuss and amend or adopt the draft findings as their final decision."

The minutes also reflect the members of the board confirming that they had read the transcript and exhibits of the plaintiff's 1974 termination proceeding. Several members of the board expressed dissatisfaction with the state of the record, but were instructed by their attorney that they must limit their consideration to the 1974 record. A general discussion of the merits of the case ensued, until the members of the board had reached a conclusion. The unanimous conclusion was that valid grounds existed for the termination of the plaintiff's employment.

The board chairperson agreed to write up proposed findings and a conclusion with the assistance of the

board's attorney. The draft proposed findings and conclusion would be circulated to the board members and to the plaintiff at the same time. A further board meeting would then be scheduled to allow the plaintiff to respond and for the board to consider amending or adopting the draft findings and conclusion as the board's decision.

The board's attorney transmitted the draft findings and conclusion to the plaintiff's counsel on February 24, 1995. The plaintiff was also afforded, until March 17, 1995, to submit "[a]ny written argument [she] wished to present." A special meeting of the board was proposed for the week of March 27, 1995 to allow for the plaintiff's oral argument and for action by the board.

On March 23, 1995, the board's attorney notified the plaintiff's attorney by facsimile of a March 28, 1995 special meeting of the board on the plaintiff's case. The letter noted the absence of a written brief by the plaintiff but welcomed oral argument at the meeting.

On March 28, 1995, the plaintiff, through her attorney, requested orally and in writing a rescheduling of the board meeting concerning the plaintiff's case.

On April 28, 1995, the board disseminated a formal notice of a May 8, 1995, 7 p.m. meeting to address a personnel matter involving the plaintiff.

The board met in public session on May 8, 1995. All nine members of the board who participated in the January 25, 1995 meeting were present. Also in attendance were the board's attorney, the plaintiff, the plaintiff's attorney, the board's personnel director and members of the press.

The meeting was not recorded, but the record contains detailed minutes. The minutes were conceded to be accurate by the plaintiff's attorney at oral argument and in the plaintiff's brief.

The meeting was not called to order until 7:15 p.m., following an approximately fifteen minute delay, at the plaintiff's request. The delay was for the purpose of allowing the plaintiff additional time to consult with her attorney.

The plaintiff's attorney objected to the absence of a stenographer or a recording device. The claim was made pursuant to the Teacher Tenure Act, General Statutes § 10-151 et seq. The board's attorney, after disputing the nature of the tenure act requirement, indicated that the plaintiff was free to tape-record the meeting, and pointed out her opportunity to have submitted a written brief. Following a colloquy by counsel relating to the role of the current board, the plaintiff commenced her presentation.

The plaintiff initially got into a dispute with the board over access to records and was advised that the board would not consider additional evidence. The plaintiff also sought to inquire of each board member his or her reasons for supporting the proposed finding and conclusion. The chairperson of the board denied this request and directed the plaintiff to make her argument.

The plaintiff proceeded with a detailed presentation, responding to the proposed findings and conclusion. The meeting was recessed between 8:50 p.m. and 9:05 p.m. When the meeting was reconvened, the chairperson of the board indicated that in absence of any agreement on a reasonable time limit, the meeting would end at 10 p.m. The plaintiff's attorney objected and argued that the plaintiff should be given as long as she wished, with additional meeting dates if necessary.

The plaintiff continued her detailed presentation until interrupted by the board chairperson at 10 p.m. The plaintiff asked for a short time to finish her point and this was permitted. The plaintiff's request for an additional hour to finish her entire presentation was denied.

The chairperson of the board inquired if any member of the board wished to comment about the proposed findings and conclusion or to address any points raised by the plaintiff. No board member responded.

A board member proposed the adoption of the proposed findings and conclusion. The board then voted unanimously to adopt the proposed findings and conclusion and to terminate the plaintiff's employment. The board meeting was then adjourned at 10:15 p.m.

It is from this vote that the plaintiff has appealed pursuant to § 10-151 (f).

In her brief, the plaintiff claims that the board's May 8, 1995 decision violates her constitutional rights to due process of law, her rights under § 10-151, and the mandate of the Connecticut Supreme Court. The violations alleged were allegedly occasioned by the absence of a verbatim record of the May 8, 1995 meeting, the restrictions on her presentation at such meeting and the failure of the record to support the "Findings and Conclusion."

The plaintiff's brief also claims that the board's termination decision was arbitrary, capricious, illegal, biased, an abuse of discretion and made in bad faith. The other issues raised in the appeal but not briefed are viewed as abandoned. *Collins* v. *Goldberg*, 28 Conn. App. 733, 738, 611 A.2d 938 (1992).

In evaluating the plaintiff's claims, this court must review the decisions of our Supreme Court which directly address the present case, in order to evaluate what the board was obligated to do after the most recent remand.

In its first review in 1980, the Supreme Court addressed two claims of the plaintiff. One claim about the validity of the board's August 30, 1974 meeting was rejected. Thus, the court decided the case on one issue:

"On appeal, the plaintiff claims that the trial court erred . . . (1) in concluding that the board's failure to state the reasons for its decision or the evidence upon which it relied did not deprive the plaintiff of due process of law. . . ." *Lee* v. *Board of Education*, supra, 181 Conn. 71. The court further noted that "[t]he plaintiff does not challenge the sufficiency of the notice and hearing requirements of . . . § 10-151 (b). The record discloses that the plaintiff was afforded adequate notice of the charges made and that the hearing held pursuant to § 10-151 (b), at which the plaintiff was represented by counsel, presented evidence and cross-examined witnesses, complied with the constitutional safeguards. Her single claim in this regard is that the board's failure to state the reasons for its decision and the evidence upon which it relied deprived her of due process of law." Id., 76–77.

The Supreme Court in *Lee* then went on to hold: "Those decisions, and their rationale, lead us to the conclusion that a tenured teacher discharged for cause under . . . § 10-151 (b) is entitled, as a matter of constitutional law, to a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon." Id., 79.

In language which is particularly instructive to this court, the *Lee* decision notes: "Our conclusion is also based upon . . . § 10-151 (f) [Rev. to 1979], which grants a teacher aggrieved by the board's decision the right to judicial review in the Superior Court. On appeal, the court must determine whether the appropriate procedure under the statute and the state and federal constitutions was employed . . . and whether the evidence relied upon was reliable and substantial and, if believed, sufficient to establish cause under the statute." (Citation omitted.) Id., 81.

In its decision in *Halpern* v. *Board of Education*, supra, 231 Conn. 310, the court determined that: "The

dispositive issue in this administrative appeal is the scope of our mandate 'for further proceedings consistent with [our] opinion' in *Lee* v. *Board of Education*, [supra, 181 Conn. 84]."

The issues and disposition in *Halpern* v. *Board of Education*, supra, 231 Conn. 311, are enunciated as follows: "The gravamen of the plaintiff's present appeal is that the members of the board that reconsidered her termination in 1980, could not validly conduct the 'further proceedings' ordered by this court because none of them had been a member of the board at the time of the original termination proceedings in 1974. The plaintiff maintains that the actions of the newly constituted board in making its determination on the prior record, without conducting an entirely new hearing, violated: (1) her statutory rights; (2) her constitutional rights; and (3) the mandate of our remand order. Although we disagree that a new hearing is required, we agree that the special circumstances of this case warrant a more expansive interpretation of our mandate than it received from the board or from the trial court."

The express mandate provides: "To eliminate any ambiguity in our present order of remand, we direct the trial court to set aside its judgment and to remand the case to the board to determine whether there are grounds for the plaintiff's termination and to specify the evidence that supports its determination. In order to provide the plaintiff with a voice in these proceedings, we direct the board to adopt, by analogy, the procedure specified by the Uniform Administrative Procedure Act in General Statutes § 4-179. That section requires, in somewhat comparable circumstances, the preparation of a 'proposed final decision' and affords to interested parties the opportunity to comment on that proposal by filing exceptions and presenting briefs and oral argument to the officials who are to render the decision. We have held that the opportunity to

respond to a 'proposed final decision' is a constitutionally adequate safeguard of the due process rights of the parties whose interests are being adjudicated in a contested case. *Pet* v. *Dept. of Health Services*, 228 Conn. 651, 672, 638 A.2d 6 (1994). The board is therefore directed in this case to prepare such a 'proposed final decision,' and thereafter to afford the plaintiff and other interested parties the opportunity for appropriate responses thereto, including the right to file exceptions and to present briefs and oral argument to the board. After due consideration of these responses, the board is then authorized to adopt a final decision including the requisite findings concerning the propriety of the termination of the plaintiff's tenure as a teacher in 1974." Id., 314–15.

The court, having reviewed the history of the case and the Supreme Court mandate, will now review the plaintiff's claims.

The board argued that the plaintiff has waived her right to challenge the sufficiency of evidence supporting her termination. "The plaintiff has not challenged the conclusion of the trial court that the evidence adduced at her termination hearing was sufficient to support the findings of the board." Id., 311 n.2. Nevertheless, we are now addressing new "findings" and a new "conclusion." The findings and conclusion of record in *Halpern* were improperly reached in violation of the plaintiff's constitutional due process rights. Id., 313.

The Supreme Court made clear in *Lee* v. *Board of Education*, supra, 181 Conn. 81, that one of the specific reasons for requiring findings (a statement of reasons and evidence relied upon) was because under a § 10-151 (f) (Rev. to 1979) appeal "the court must determine whether . . . the evidence relied upon was reliable and substantial and, if believed, sufficient to establish cause under the statute." (Citations omitted.)

On May 8, 1996, the board, having independently reviewed the record of the 1974 termination hearing, adopted findings and a conclusion terminating the plaintiff's employment. The Teacher Tenure Act clearly affords the plaintiff the opportunity, however belatedly, to have a court review the merits of that decision. This appeal presents the first opportunity to review findings and a conclusion which were reached pursuant to a procedure which was not violative of the plaintiff's constitutional rights or the Connecticut Supreme Court's mandate.

An analysis of the plaintiff's bias claim is also assisted by the court's consideration of the record upon which the board acted on the merits.

A basic principle of administrative law is that the scope of the court's review of an agency's decision is very limited. General Statutes § 4-183 (j) provides that "[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . . ." In order to obtain reversal of an agency's decision, the plaintiff must demonstrate that she suffered "material prejudice as a result of this alleged procedural deficiency." *Jutkowitz* v. *Dept. of Health Services*, 220 Conn. 86, 94, 596 A.2d 374 (1991).

Furthermore, "[j]udicial review of conclusions of law reached administratively is also limited. The court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . ." (Internal quotation marks omitted.) *Connecticut*

Light & Power Co. v. *DPUC*, 219 Conn. 51, 57–58, 591 A.2d 1231 (1991). Similarly, "[w]ith regard to questions of fact, it is [not] the function of the trial court . . . to retry the case or to substitute its judgment for that of the administrative agency." (Internal quotation marks omitted.) Id., 57. "The question is not whether the trial court would have reached the same conclusion but whether the record before the commission supports the action taken." (Internal quotation marks omitted.) *Hospital of St. Raphael* v. *Commission on Hospitals & Health Care*, 182 Conn. 314, 318, 438 A.2d 103 (1980).

"Judicial review of [an administrative agency's] action is governed by the Uniform Administrative Procedure Act (General Statutes, c. 54, §§ 4-166 through 4-189), and the scope of that review is very restricted. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the [administrative agency]. . . . The court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of [its] discretion." (Citations omitted; internal quotation marks omitted.) *Board of Education* v. *Freedom of Information Commission*, 208 Conn. 442, 452, 545 A.2d 1064 (1988).

Nevertheless, where "the issue is one of law, the court has the broader responsibility of determining whether the administrative action resulted from an incorrect application of the law to the facts found or could not reasonably or logically have followed from such facts. Although the court may not substitute its own conclusions for those of the administrative board, it retains the ultimate obligation to determine whether the administrative action was unreasonable, arbitrary, illegal or an abuse of discretion." *United Parcel Service, Inc.* v. *Administrator*, 209 Conn. 381, 385–86, 551 A.2d 724 (1988).

Exhibit H of the record contains a detailed chronology of a major portion of the 1973-74 school year from September 10, 1973 through March 29, 1974. It includes: twenty-three days when the plaintiff was late for work; three incidents when the plaintiff, during the course of the school day, left her students unsupervised; two occasions when the plaintiff failed to pick up her students from special classes; eight instances of the plaintiff being either late or absent from assigned supervisory duties; and, five times when the plaintiff missed or was late for special classes. Exhibit H also documents ongoing disputes about the plaintiff's keeping first grade students after school, assigning excessive class work and homework, denying lunch and recess breaks to students and parental complaints about the plaintiff's performance.

At the hearing in 1974, the principal of the school where the plaintiff taught substantiated, on his personal knowledge, a clear majority of the events listed in exhibit H.

The plaintiff was repeatedly directed orally and in writing to follow specific directives relating to reporting to work on time, dismissing classes on time, not assigning mandated homework and not leaving her class unattended. Exhibit H and principal Kerr's testimony provided evidence of a failure to comply with these directives.

At the hearing, the plaintiff denied some, but not all, of the alleged deficiencies in her performance. The transcript of the hearing stated in pertinent part:

"Q. Mrs. Lee you have conceded, and we all accept the fact that you . . . just can't get to work on time, is that correct? Is that a fair statement?

"A. It is not an everyday occurrence, but during the course of the year I am late.

"Q. It is not like once or twice a month, it is more like once or twice a week?

"A. I would say once a week."

Also, at pages 164, 166 and 170 of the transcript, the plaintiff acknowledged her failing to meet her obligations and to refusing willfully to follow directions.

The board's "Findings of Fact" are substantiated by reliable and probative evidence in the record.

The critical conclusions of the board are: "The Board concludes that Ms. Lee's chronic failure to report to work on time, as well as her repeated failure to perform supervisory duties as scheduled or get students to special classes as scheduled, continued with such frequency and over such a period of time as to constitute inefficiency or incompetence. The Board also concludes that Ms. Lee's failure to stop assigning homework to her first grade students, and especially her failure to heed administrative directives to dismiss children at 3:00 p.m., were sufficiently significant and serious to constitute insubordination."

The Teacher Tenure Act, § 10-151 et seq., sets forth the grounds upon which a tenured teacher's employment may be terminated.

Section 10-151 (d) (1) (Rev. to 1995) specifically includes "inefficiency or incompetence," as a ground for termination.

The documented evidence of repeated and admitted tardiness, combined with a record of failure to cover assignments, suffice to substantiate a conclusion of inefficiency and or incompetence. The plaintiff's repeated failure to arrive on time for supervisory duties, such as recess, presented safety problems. Her tardiness and forgetfulness with respect to special classes disrupted the schedules of other teachers and deprived

students of educational opportunities offered by the school. No matter how skilled a teacher may be, a continuous failure to report on time and to cover assignments constitute inefficiency and or incompetence.

The board's conclusion as to insubordination is offered not under § 10-151 (d) (2), insubordination against reasonable rules of the board of education, but rather under § 10-151 (d) (6), other due and sufficient cause.

The board relies on *Tucker* v. *Board of Education*, 177 Conn. 572, 577, 418 A.2d 933 (1979) for the proposition that insubordination may constitute "other due and sufficient cause" for the termination of a tenured teacher.

The record reflects the plaintiff's repeated and willful refusal to follow the directives of her administrative superiors. It is unquestionably insubordinate conduct. The pattern and continuation of such conduct also substantiate the conclusion that it was of a serious enough nature to justify a termination of the employment of a tenured teacher. "The board contends that insubordination in and of itself constitutes " 'other due and sufficient cause' " for the termination of the plaintiff's contract and is a valid statutory basis for dismissal under the provisions of § 10-151 (b) (6). We agree with the board's contention." Id.

In her brief, the plaintiff challenges the proposed findings and conclusion as not meeting due process of law standards. The plaintiff claims that the proposed findings and conclusion were not specific enough for her to respond to.

In *Lee* v. *Board of Education*, supra, 181 Conn. 80, the Supreme Court noted that "[t]he statement of reasons and a fair summary of the evidence relied upon

need not reflect the polish of a judicial opinion. Reasoned and fair decision making, not technical finesse, is guaranteed by the due process standards of the state and federal constitutions."

The proposed findings and conclusion are five pages in length, contain thirteen specific findings and include a weighing and assessment of the evidence. The record also indicates that the plaintiff and her attorney were present on January 25, 1996, when the board discussed the evidence and considered a conclusion. The proposed findings and conclusion meet the constitutional due process requirements for administrative agencies.

The plaintiff's claims respecting her opportunity for input on the proposed findings and conclusion are essentially twofold. One aspect is the denial of the opportunity to present additional evidence and the other claim relates to the time limitation on oral argument.

The plaintiff was not entitled constitutionally, under § 10-151 or under the Supreme Court's mandate, to present further evidence in response to the proposed findings and conclusion. In the initial Supreme Court decision, it was determined that the plaintiff was given a constitutional and statutorily adequate hearing in 1974. "The record discloses that the plaintiff was afforded adequate notice of the charges made and that the hearing held pursuant to § 10-151 (b), at which the plaintiff was represented by counsel, presented evidence and cross-examined witnesses, complied with the constitutional safeguards." Id., 76. The sole defect was the board's failure to state the reasons for its decision and the evidence upon which it relied. Id., 76–77.

The remands in both the *Lee* and *Halpern* decisions clearly did not contemplate further evidentiary proceedings. *Halpern* expressly addressed this claim: "Applying these principles to the circumstances of this case, we

are persuaded that the plaintiff cannot prevail on her claim that she is entitled, as a matter of statutory right, to a new termination hearing. In our prior decision, we concluded that the plaintiff's statutory rights had not been violated. *Lee* v. *Board of Education*, supra, 181 Conn. 76–77. Accordingly, our mandate for further proceedings did not direct a new hearing under the statute." *Halpern* v. *Board of Education*, supra, 231 Conn. 312.

As previously noted, the Supreme Court's explicit mandate in this decision affords the plaintiff the opportunity to have "a voice in [the] proceedings" through a process that would allow her to "comment on that proposal by filing exceptions and presenting briefs and oral argument to the officials who are to render the decision." Id., 314.

The plaintiff did not have any right to examine the board members individually, to introduce additional evidence or to enter into discovery proposals.

The plaintiff was afforded a voice in the proceedings and was given ample opportunity to comment on the proposed findings and conclusion by written brief and or oral argument. The plaintiff chose not to file written briefs and elected to argue herself rather than through her experienced attorney.

Due process requires fair proceedings, not perfect or exhaustive proceedings. *State* v. *Daugaard*, 231 Conn. 195, 218, 647 A.2d 342 (1994), cert. denied, 513 U.S. 1099, 115 S. Ct. 770, 130 L. Ed. 2d 666 (1995). To afford the plaintiff unlimited time to argue as her attorney originally proposed, is an absurd claim. To deny an additional hour of argument after hearing in excess of two hours of argument, is a reasonable action by the board. "An administrative hearing does not have to match the model of a trial in court. . . . It must, however, meet some modicum of orderly and fair procedure." (Citation omitted.) *Zanavich* v. *Board of*

Education, 8 Conn. App. 508, 512, 513 A.2d 196, cert. denied, 201 Conn. 809, 515 A.2d 381 (1986).

In analyzing the plaintiff's arguments, the court has considered the facts as represented in the record, not the factual misrepresentations contained in the plaintiff's brief. The plaintiff's "Preliminary Brief," dated November 17, 1995, asserts that: "The defendant board offered the Plaintiff the options of submitting objections in writing or appearing at a hearing to present rebuttal. The Plaintiff chose the latter." At oral argument, the plaintiff's counsel conceded that the plaintiff was free to comment both in writing and orally. The plaintiff asserts on page five of her brief that she was peremptorily cut off in her oral argument. In fact, after presenting over an hour of oral argument, she was afforded at least forty-five minutes to conclude her argument and afforded the courtesy of an extra few minutes to conclude a point.

Pet v. *Dept. of Health Services*, 228 Conn. 651, 662–63, 638 A.2d 6 (1994), dealt with the imposition of a time limit on cross-examination. The context of the time limit was dispositive in determining that it was not inappropriate.

The plaintiff's failure to take advantage of the fair opportunity to respond in writing is related to the time necessary to allow a fair oral argument. Similarly, the plaintiff's election to reserve to the May 8, 1995 hearing her concerns about the specificity of the findings undermines her objections.

The board's communications to the plaintiff concerning the procedure to be followed on remand express an openness to suggestions and input by the plaintiff. The record is devoid of any comment from the plaintiff until the literal eleventh hour. This pattern suggests the plaintiff's concerns as being procedural, as opposed to substantive. It is certainly long past the time for any

substantive issues relating to the termination to be aired and finally resolved.

Section 10-151 (f) provides in pertinent part that in the event of a tenured teacher termination appeal: "The board of education shall file with the court a copy of the complete transcript of the proceedings of the hearings held by the board of education or by an impartial hearing panel for such teacher . . . as shall constitute the record of the case."

The May 8, 1995 oral argument, discussion and vote were not transcribed. The plaintiff objected to the lack of a verbatim record at such hearing.

The defendant board argues that the statute refers to the evidentiary portion of such proceedings, not oral argument and board discussion. This construction is supported by a consideration of the teacher termination procedure outlined in § 10-151 (d). Termination hearings may be before a board of education subcommittee, impartial hearing panel or a single impartial hearing officer. The panel chosen holds an evidentiary hearing and makes findings and a recommendation to the board of education. Under the pertinent provisions of § 10-151 (d), the panel chosen "shall submit written findings and a recommendation to the board of education as to the disposition of the charges against the teacher . . . . The board of education shall give the teacher concerned its written decision within fifteen days of receipt of the written recommendation of the impartial hearing panel, subcommittee or hearing officer." Thus, the statute contemplates an evidentiary hearing before a panel which will make factual findings and recommendations to the full board of education, which will decide the case. See *Catino* v. *Board of Education*, 174 Conn. 414, 389 A.2d 754 (1978). The court interprets the reference in § 10-151 (f) to "complete transcript . . . of the hearing held by the board of education or by an impartial hearing

panel" to relate back to the board subcommittee or panel which heard the evidence in the case.

The plaintiff fails to provide any basis for the court to conclude the failure to provide a transcript of the May 8, 1995 proceeding in any way prejudiced her. Detailed minutes of the May 8, 1995 meeting are in the record. The plaintiff's counsel, at oral argument, acknowledged the accuracy of these minutes. A transcript would only have reflected the plaintiff's verbatim oral argument. There was no board discussion. The plaintiff on appeal must show not only a technical error, but that there is some resulting harm to her from such error. *Pet* v. *Dept. of Health Services*, supra, 228 Conn. 663. The failure to record the proceedings of May 8 did not adversely impact the plaintiff's substantive rights under § 10-151 or under the state and federal constitutions.

Additionally, the plaintiff was offered the opportunity to record the proceedings herself and made no effort to do so, or to request a continuance to make arrangements to do so. "In administrative appeals, we have held that the failure to utilize a remedy available to cure a defect deprives a complainant of the right to object to the alleged defect." Id., 664; *Dragan* v. *Connecticut Medical Examining Board*, 223 Conn. 618, 631, 613 A.2d 739 (1992); *Jutkowitz* v. *Dept. of Health Services*, supra, 220 Conn. 95–96.

The plaintiff's claim of bias is not supported by evidence of a disqualifying interest in the case. "It is presumed that members of administrative boards acting in an adjudicative capacity are unbiased." *Jutkowitz* v. *Dept. of Health Services*, supra, 220 Conn. 100; see also *Petrowski* v. *Norwich Free Academy*, 199 Conn. 231, 236, 506 A.2d 139, appeal dismissed, 479 U.S. 802, 107 S. Ct. 42, 93 L. Ed. 2d 5 (1986), involving a challenge to board of education members in a teacher termination

case. The party who contends that an adjudicator is biased bears the burden of proving the disqualifying interest. *Clisham* v. *Board of Police Commissioners*, 223 Conn. 354, 361, 613 A.2d 254 (1992).

The claim of bias is allegedly evidenced by the failure of the board to discuss the findings after the plaintiff's oral argument on May 8, 1995. The board had received the record of the 1974 hearing by the January 4, 1995 transmittal. All board members had reviewed the materials prior to discussing them in public session on January 25, 1995. Proposed findings and a recommendation had been available since February 24, 1995. The plaintiff had declined to comment in writing on the proposed findings and recommendation.

The court cannot conclude from the record that the board acted improperly when it declined the opportunity to discuss or to amend its proposed findings and recommendation following the plaintiff's oral argument.

For the reasons set forth above, the court finds no violation of the plaintiff's rights.

The plaintiff's appeal is dismissed.

BOARD OF EDUCATION
Bristol, Connecticut

January 25, 1995 Special Meeting

A special meeting of the Board of Education was held on Wednesday, January 25, 1995 at 7:00 P.M., in the Auditorium of the Board of Education Building, 129 Church Street, Bristol, Connecticut.

PRESENT: Chairman Rit Croce, Commissioners Beverly R. Bobroski, John L. Cattelan, Ronald C. Messier, Janet L. Moylan, Kathleen A. Roberge, Dr. Richard P. Saporito, Reinhard L. Walker, and Cheryl M. Yetke; Attorney Brian Clermow of the legal firm of Shipman and Goodwin, representing the Board of Education; Elinor Hapern; Ms. Halpern's legal representative, Attorney Jon L. Schoenhorn; and William E. White, Director of Personnel.

CALL TO ORDER:
Chairman Croce called the meeting to order at 7:09 p.m.

PURPOSE OF MEETING:
Chairman Croce asked Attorney Clemow to explain the purpose of the meeting. Attorney Clemow reviewed the history of the Elinor Lee Halpern case, and the latest directive from the Connecticut Supreme Court. He stated the purpose of the meeting was to complete the initial steps toward compliance with that directive.

Attorney Clemow explained that while the purpose of the meeting was to discuss the termination of employment of a former teacher in the Bristol Public Schools, the discussion would be held in public session at the request of Ms. Halpern, as conveyed through her attorney, Jon L. Schoenhorn.

Attorney Clemow also stated that Attorney Schoenhorn had requested that the draft findings contemplated by the Connecticut Supreme Court decision be distributed to his client at the same time they are distributed to all of the members of the Board, so that he is permitted to comment or respond to them before the full Board votes on them. Accordingly, Attorney Clemow suggested that the draft findings be prepared by a single member of the Board, in consultation with counsel, then distributed to Ms. Halpern and the Board. After Ms. Halpern has an opportunity for input as contemplated by the Supreme Court, the full Board can then discuss and amend or adopt the draft findings as their final decision.

Several commissioners asked questions about various procedural issues. Some expressed dissatisfaction with the state of the record before them. However, Attorney Clemow made it clear the Commissioners must limit their consideration to the transcript of the 1973 hearing, and the exhibits introduced at that hearing. He asked whether each Commissioner had read the transcript and exhibits, and each Commissioner confirmed that he or she had done so.

There ensued a general discussion of the merits of the case. Each Commissioner expressed his or her views on the matter, and gave an opinion as to how the case should be decided and why. A few Commissioners expressed their desire to hear further discussion before making up their mind. After further discussion, they each did come to a conclusion. All Commissioners stated they felt there were valid grounds for the termination of the employment of Ms. Halpern.

Chairman Croce agreed to write up proposed findings and conclusions, in consultation with Attorney Clemow. This draft will be circulated to each Commissioner and Ms.

Halpern, and another meeting of the Board will be scheduled for the purpose of discussing and amending or adopting the draft findings as the final decision of the Board.

ADJOURNMENT:
On motion of Commissioner Moylan, seconded by Commissioner Bobroske, it was unanimously VOTED: That the meeting be adjourned.

Attest:
Kathleen A. Roberge, Secretary
Board of Education

Bristol Board of Education
In the Matter of the Termination of Employment of
Elinor Lee Halpern
Proposed Findings and Conclusions

This matter comes before the board for the third time in more than twenty years, as a result of a decision by the Connecticut Supreme Court in the fall of 1994. While the history of this case is spelled out in some detail in that decision, This following brief summary should be helpful.

On August 30, 1974, The Board (as it was then constituted) held a hearing on the recommendation of the administration that the contract of employment Elinor Lee (now Halpern) be terminated. Following a full hearing where each party had the opportunity to present witnesses and exhibits, the Board voted in favor of termination. Following judicial appeals, the case was remanded to the Board in 1980, with direction to issue written decision including findings of fact and conclusions of law. On November 12, 1980 the Board (as then constituted) issued such a decision, affirming Ms. Halpern's termination of employment.

Following another series of judicial appeals, the case was once again remended to the Board, with direction to permit Ms. Halpern input in the decision-making process, by issuing proposed findings and conclusions and offering Ms. Halpern an opportunity to submit an oral and written argument before a final decision is adopted.

Pursuant to this directive, the members of the Board (as presently constituted) reviewed the 1973 hearing transcript and exhibits, and met on January 25, 1995 in an open session to discuss their views. The Chairman of the Board, in consultation with the Board's council has prepared the Following findings of fact and conclusions of the law, Reflecting the views expressed by the members of the Board at the January 25 meeting.

Findings of Fact

1. In the 1973-74 school year, Elinor Lee was employed as a teacher in the Bristol Public Schools, and was assigned to a first grade class at Greene-Hills School.

2. Based primarily on concerns about her performance during the 1973-74 school year expressed by her principal, Gerald T. Kerr, and by the Assistant Superintendent for Personnel, Constant W. Blum, Ms. Lee was notified by the Superintendent of Schools, Dr. William F. Rowe, that termination of her contract was under consideration by the Board of Education.

3. At the hearing before the Board of Education on August 21, 1974, Both Ms. Lee and the Administration (designated in the transcript as the "City") was represented by counsel;. Both presented witnesses who testified under oath and were subject to cross-examination; and both presented documentary evidence (teacher Exhibits 1-4 and City Exhibits A-H).

4. The administration's reasons for recommending termination were grouped under two general categories: "Inefficiency - Breach of Contract Concerning the Absenteeism ans Tardiness of Subject," and "Insubordination and Unacceptable teaching Patterns." Numerous examples under each category were detailed in city Exhibit H. In Teacher Exhibit 1, some of these examples were admitted and some were denied, but in most cases Ms. Lee's response consisted of am excuse or an explanation for her behavior.

5. On August 20, 1973, Mr. Kerr directed Ms. Lee in writing not to require or permit children to remain after school. "with or without parental permission"; not to require or permit children "to stay in during recess or at noon hour to complete homework"; and not to hold responsible for completing work taken home (City Exhibit D).

6. ON October 23, 1973, Mr. Blum directed Ms. Lee to be on duty "no later than 8:40 a.m. on each school day"; to dismiss all of her class promptly at 3:00p.m. each

day so they "leave school a few minutes thereafter" and get specific permission from Mr. Kerr for any exceptions; to assign homework "for which a required return is mandated"; ans "never to leave your class unattended" (City Exhibit D).

7. On December 6, 1973. Dr. Rowe reaffirmed these directives in writing (City Exhibit E).

8. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives references in paragraphs 6 and 7 above, Ms. Lee did not report for duty by 8:40 a.m. As required.

9. On numerous occasions during the 1973-74 school year, Ms. Lee was tardy or absent from her assigned duty.

10. On numerous occasions during the 1973-74 school year, Ms. Lee failed to send or bring her students to special classes when scheduled.

11. With respect to many of the occasions referenced in paragraphs 8-10 above, Ms. Lee offered no satisfactory excuse or reasonable explanation. With respect to those instances where Mr. Kerr's assertions were contradicted by Ms. Lee, the former generally carry more weight than the latter because they are supported by Mr. Kerr's contemporaneous notations.

12. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphed 6 and 7 above, Ms. Lee required or permitted first grade students to remain in the classroom during recess period to complete assigned work, or to remain in the classroom long after 3:00 p.m. without permission from Mr. Kerr.

13. There is evidence that on various occasions during the 1973-74 school year, including some occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee assigned work which children were required to complete at home. Although this evidence is

largely second-hand (parental reports, etc.) it is not specifically denied by Ms. Lee.

Conclusions:

The board recognizes that in most employment relationships there are both positive and negative aspects, and this case presents no exception to the rule. The evidence indicates Ms. Lee was a dedicated and hard-working teacher. Some of the parents who testified in her behalf were very complimentary. Apparently there were some children who responded positively to her particular teaching style.

It is also entirely possible that some of Ms. Lee's difficulties with the administration resulted not from incompetence or negligence, but rather from a difference in philosophy or approach. The picture that emerges from the record is one of a teacher who "marches to her own drummer." In certain other settings, these qualities might not be disadvantageous, in fact quite the contrary. However, in the Public Schools, Ms. Lee's positive qualities were outweighed by her negative ones.

The fact that she was repeatedly late for school, usually with no advance notice, created both educational and safety problems for the administration. When she failed to get children to special classes on time (or at all), she not only deprived them of educational opportunities, but disrupted the schedules of other professionals in the school. When she missed scheduled supervisory duties, she again put the children at risk.

Her excuses for these repeated failures were simply inadequate. "My alarm clock didn't work," or "The clock in my classroom is incorrect," or "I couldn't find my car keys" are explanations one might expect from a teenager, not from a responsible adult professional --at least not on multiple occasions. In her position, it was reasonable for the administration to expect her to be where she was supposed to be , and on time. While everyone makes mistakes

occasionally, hers were beyond all reasonable proportions.

With respect to keeping first-graders after school, or assigning them homework, the issue is not one of inefficiency or incompetence, but rather insubordination. However valid Ms. Lee may have felt her approach to be, she had been instructed in writing not to engage in these practices. Although there are indications in the record that she made some attempts to address concerns expressed by the administration, the bottom line is that she never fully complied with their directives.

When one accepts a job, one must also accept the policies and procedures adopted by management. The principal is responsible for running the school, and when Mr. Kerr instructed her to avoid certain methods of instruction, Ms Lee was obligated to comply. The fact that some parents praised her methods is besides the point, especially since other parents asked to have their children removed from her class.

There can be no doubt that Ms. Lee was provided with ample notice of what was expected of her. Not only was she given crystal clear instructions by her principal before the start of the 1973-74 school year, they were reinforced by written directives from the Assistant Superintendent and Superintendent a few months later. It appears from the record that Ms. Lee's problems persisted even after she was notified that termination of her contract was under consideration.

The Board concludes that Ms. Lee's chronic failure to report to work on time, as well as her repeated failure to perform supervisory duties as scheduled or to get students to special classes as scheduled, continued with such frequency and over such a period of time as to constitute inefficiency or incompetence. the Board also concludes that Ms. Lee's failure to stop assigning homework to her first-grade students, and especially her failure to heed administrative directives to dismiss children at 3:00 p.m., were sufficiently

significant and serious to constitute insubordination.

Again, The Board recognizes Ms. Lee's many positive attributes, the support she enjoyed from several parents, and the efforts she apparently made to address some of the administration's concerns. However, on balance it is the Boards unanimous conclusion that there was due and sufficient cause for termination of Ms Lee's contract of employment.

* * *

These findings and conclusions were approved
By the Board Chair for Distribution to members
of the Board and other interested parties on
February 23, 1995

BRISTOL BOARD OF EDUCATION

In the Matter of Termination of Employment of Elinor Lee Halpern

FINDINGS AND CONCLUSIONS

This matter comes before the Board for the third time in more than twenty years, as a result of a decision by the Connecticut Supreme Court in the fall of 1994. While the history of this case is spelled out in some detail in that decision, the following brief summery may be helpful.

On August 30, 1974 the Board (as it was then constituted) held a hearing on a recommendation of the administration that the contract of employment Elinor Lee (now Halpern) be terminated. Following a full hearing where each party had the opportunity to present witnesses ans exhibits, the Board voted in favor of termination. Following judicial appeals, the case was remanded to the Board in 1980, with direction to issue a written decision including findings of fact and conclusions of law. On November 12, 1980 the Board(as then constituted) issued such a decision, affirming Ms. Halpern's termination of employment.

Following another series of judicial appeals, the case was once again remanded to the Board, with direction to permit Ms. Halpern input into the decision-making process, by issuing proposed findings and conclusions and offering Ms. Halpern an opportunity to submit oral and written argument before a final decision is adopted.

Pursuant to this directive, the members of the Board (as presently constituted) reviewed the 1973 hearing transcript and exhibits, and met on January 25, 1995 in am open session to discuss their views. The Chairman of the Board, in consultation with the Board's counsel, prepared proposed findings and conclusions, reflecting the views

expressed by the members of the Board at the January 25 meeting. The proposed findings and conclusions were disseminated to the members of the Board and to Ms. Halpern simultaneously, under cover letter dated February 24, 1995.

By that letter, Ms. Halpern was provided an opportunity to submit written argument regarding the proposed findings and conclusions, but no such material was submitted. Ms. Halpern was also offered the appertained to present oral argument at a meeting of the Board called for such purpose. Originally scheduled for March 28, 1995, this meeting was postponed at Ms. Halpern's request for several weeks, and was eventually held on May 8, 1995.

Following approximately three hours of oral argument
by Ms. Halpern and her attorney, the Board voted unanimously to adopt the proposed findings and conclusions as the Board's final decision. Those findings and conclusions are as follows:

Findings of Fact

1. In the 1973-74 school year, Elinor Lee was employed as a teacher in the Bristol Public Schools, and was assigned to a first-grade class at Greene-Hills School.

2. Based primarily on concerns about her performance during the 1973-74 school year expressed by her principal, Gerald T. Kerr, and Assistant Superintendent for Personnel, Constant W. Blum, Ms. Lee was notified by the Superintendent of Schools, Dr. William F. Rowe, that termination of her contract was under consideration by the Board of Education.

3. At the hearing before the Board of education

on August 21,1974, both Ms. Lee and the administration (designated in the transcript as "City") were represented by counsel; both presented witnesses who testified under oath and were subject to cross-examination; and both presented documentary evidence (Teacher Exhibits 1-4 and City Exhibits A-H).

4. The administration's reasons for recommending termination were grouped under two general categories: "Inefficiency - Breach of Contract Concerning the Absenteeism and Tardiness of Subject," and "Insubordination and Unacceptable Teaching Patterns." Numerous examples under each category were detailed in City Exhibit H. In teacher Exhibit 1, some of these examples were admitted and some were denied, but in most cases Ms. Lee's response consisted of an excuse or explanation for her behavior.

5. On August 20, 1973, Mr. Kerr directed Ms. Lee in writing not to require or permit children to remain after school, "with or without parental permission;" not to require or permit children "to stay in during recess or noon hour to complete homework;" and not to hold children responsible for completing work taken home (City Exhibit A).

6. On October 23, 1974, Mr. Blum directed Ms. Lee to be on duty "no later than 8:40 a.m. on each school day;" to dismiss all of her class promptly at 3:00 p.m. each day so they "leave school a few minutes thereafter" and to get specific permission from Mr. Kerr for any exceptions; to assign no homework "for which a required return is mandated;" and "never to leave your class unattended" (City Exhibit D).

7. On December 6, 1973, Dr. Rowe reaffirmed these directives in writing (City Exhibit E)

8. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee

did not report for duty by 8:40 a.m. as required.

9. On numerous occasions during the 1973-74 school year, Ms. Lee was tardy or absent from her assigned duty.

10. On numerous occasions during the 1973-74 school year, Ms Lee failed to send or bring her students to special classes when scheduled.

11. With respect to many of the occasions referenced in paragraphs 8 through 10 above, Ms. Lee offered no satisfactory excuse or reasonable explanation. With respect to those instances where Mr. Kerr's assertions were contradicted by Ms. Lee, the former generally carry more weight than the latter because they are supported by Mr. Kerr's contemporaneous notations.

12. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms Lee required or permitted her first-grade students to remain in the classroom during recess period to complete assigned work, or to remain in the classroom long after 3:00p.m. without permission from Mr. Kerr.

13. There is evidence that on various occasions during the 1973-74 school year, including some occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms Lee assigned work which children were required to complete at home. Although this evidence is largely second-hand (parental reports, etc.) it is not specifically denied by Ms. Lee.

Conclusions:

The Board recognizes that in most employment relationships there are both positive and negative aspects, and this case presents no exception to that rule. The evidence indicates Ms. Lee was a dedicated and hard-working teacher.

Some of the parents who testified in her behalf were very complimentary. Apparently there were some children who responded positively to her particular teaching style.

It is also entirely possible that some of Ms.Lee's difficulties with the administration resulted not from incompetence or negligence, but rather from a difference in philosophy or approach. The picture that emerges from the record is one of a teacher who "marches to her own drummer." In certain other settings, these qualities might not be disadvantageous, in fact quite the contrary. However, in the context of a first-grade teaching position in the Bristol Public Schools, Ms. Lee's positive qualities were outweighed by her negative ones.

The fact that she was repeatedly late for school, usually with no advance notice, created both educational and safety problems for the administration. When she failed to get children to special classes on time (or at all), she not only deprived them of educational opportunities, but disrupted the schedules of other professionals in the school. When she missed scheduled supervisory duties, she again put the children at risk.

Her excuses for these repeated failures were simply inadequate. "alarm clock didn't work," or "the clock in my classroom is incorrect," or " I could not find my car keys" are explanations one might expect from a teenage, not a responsible adult professional -- at least not on multiple occasions. In her position, it was reasonable for the administration to expect her to be where she was supposed to be, and on time. While everyone makes mistakes occasionally, hers were beyond all reasonable proportions.

With respect to keeping first-graders after school, or assigning homework, the issue is not one of inefficiency or incompetence, but rather insubordination. However Valid Ms. Lee may have felt her approach to be, she had been instructed in writing not to engage in these practices.

Although there are indications in the record that she made some attempts to address concerns expressed by the administration, the bottom line is that she never fully complied with their directives.

When one accepts a job, one must also accept the polices and procedures adopted by management. The principal is responsible for running the school, and when Mr. Kerr instructed her to avoid certain methods of instruction, Ms. Lee was obligated to comply. the fact that some parents praised her methods is beside the point, especially since other parents asked to have their children removed from her class.

There can be no doubt that Ms. Lee was provided with ample notice of what was expected of her, Not only was she given crystal clear instructions by her principal before the start of the 1973-74 school year, they were reinforced by written directives from the Assistant Superintendent and superintendent a few months later. It appears from the record that Ms. Lee's problems persisted even after she was notified that termination of her contract was under consideration.

The Board concludes that Ms. Lee's chronic failure to report to work on time, as well as her repeated failure to perform supervisory duties as scheduled or get students to special classes as scheduled, continued with such frequency and over such a period of time as to constitute inefficiency or incompetence. The Board also concludes that Ms. Lee's failure to stop assigning homework to her first-grade students, and especially her failure to heed administrative directives to dismiss children at 3:00p.m., were sufficiently significant and serious to constitute insubordination.

Again, the Board recognizes Ms. Lee's many positive attribute, the support she enjoyed from several parents, and the efforts she apparently made to address some of the administration's concerns. However, on balance it is the Board's unanimous conclusion that there was due and sufficient cause for the termination of Ms. Lee's contract of

employment.

Dated this 22nd day of May, 1995

Bristol Board of Education

BY:

Richard M. Croce
Chairman

Docket No. CV95-0551453S	: Superior Court
	:
Elinor Halpern,	: J.D. Hartford/New Britain
Plaintiff	:
	: At Hartford
V.	:
	:
Bristol Board of Education,	:
Defendant	: September 24, 1996

AFFIDAVIT

I, Elinor Halpern, being duly sworn, do hereby affirm and state as follows:

That I am over the age of eighteen (18) years, and understand the obligations of an oath.

These are the issues and arguments I would have presented to the Board of Education, had I been given the opportunity:

1. Academic achievement of my students:
   a. In my classroom
   b. After they left my classroom

2. A comparison of my students' achievements with:
   a. Those in the other first grades
   b. Those in Bristol

3. Bristol has always been regarded as a priority school system by the State Board of Education, by virtue of:
   a. High dropout rates
   b. Low test scores

4. Compared to other priority schools systems, Bristol's dropout rate is one of the state's highest.

5. The two students who were transferred out of my classroom were retained for failure to do their work.

6. None of my responses to the charges were ever challenged by the board's witnesses at the 1974 hearing or at any time.

7. Despite having been observed by different supervisory personnel during the 1973-1974 school year, no one who had observed me in the classroom was called by the board as a witness.

8. In every case where there was a witness to the alleged charge or a way to independently corroborate what had happened, the testimony and/or evidence showed that Gerald Kerr had deliberately lied or grossly misrepresented the facts.

9. All the testimony against me was either:
   a. Hearsay
   b. Provided by Gerald Kerr alone
   c. Contradicted by the evidence and/or the witnesses

10. I was never charged with willfulness concerning any of the allegations against me.

11. Almost none of the alleged incidents were brought to my attention at the time they occurred.

12. I never had an unauthorized absence.

13. I was never absent in excess of the days allowed.

14. Gerald Kerr's refusal to put in writing his permission to keep children in:

a. During recess

b. After school

15. Kerr's refusal to put in writing what constituted homework (Teachers Ex. #1 p.13)

16. The teacher who was hired to replace me:

a. Had no previous teaching experience

b. Was interviewed on 5/3/74 by Constance Blum (asst. supt. of personnel) who recommended to Dr. Rowe (superintendent) that she be hired as of 9/3/74 to replace me.

c. My termination was on 8/21/74.

d. I was notified by a letter dated 8/30/74 that I had been terminated.

17. Why Gerald Kerr did not have the authority to change the board's policy manual.

18. Parents testified that they, not I, kept their children after school for help.

19. All of the parents who testified at the hearing:

a. Denied what Gerald Kerr quoted them as saying against me or

b. Denied witnessing incidents where I allegedly did something wrong or

c. Denied that a spouse who Gerald Kerr testified was at school was ever at the school

20. Letters from parents contradicting charges made against me

21. My qualifications regarding my comments on being late

22. Duty slips were not always issued in a timely fashion. This resulted in no one being on duty. (Transcript p.24) This could be why I allegedly missed or was late for a duty.

23. Why I could not have been late in taking my class to gym in past years.

24. Gerald Kerr testified that if I was late getting a class to a special event, it was because I was engrossed with them and that it slipped my mind. He also testified that it was not willful.

25. None of the clocks in the school were synchronized. Therefore, it was not hard to be "late."

26. Gerald Kerr falsely accused me of admitting to Mr. Blum that I was late more times than cited.

a. I didn't get the list of charges until the end of the school year.

b. I never met with Mr. Blum after having received it.

27. My notifying Gerald Kerr by telephone when I was going to be late

28. Comments on my being in school on time

29. If I was late for a few minutes in the morning, it would have no effect on my students since they were supervised until 8:50 a.m.

30. I was cited as tardy on those days that I was given

permission by Gerald Kerr to come in late.

31. More than half of the transcript (107 out of 180 pages) involved the testimony of witnesses. Therefore, credibility was an issue. Documentation involved only 10 pages.

32. Board Exhibit A: No parents are listed by name.

33. Restrictions applied to me were discriminatory in that other teachers routinely kept students in:

a. During the lunch hour
b. During recess
c. After school

34. Gerald Kerr ignored other teachers:

a. Forgetting recess duty
b. Getting back to their classrooms late after a break
c. Keeping students in during recess, lunch, and after school

35. Restrictions on my academic freedom

36. My use of the school phone:

a. When?
b. Why?
c. Where?
d. Emergency
e. Confidentiality of my calls.

37. The specific statement:

a. Difficulties in obtaining the examples of inefficiency, insubordination, tardiness, and absenteeism that I was accused of by Gerald Kerr

b. When I actually obtained it

c. Problems posed by receiving it at the end of the school year

38. How the "Possible Retention" forms bolster my claims regarding the policies cited in the "Greene-Hills Teacher's Hand Book." [sic]

39. "The Greene-Hills Teacher's Hand Book" [sic] policy notes on:

a. Working hours

b. Providing help after school

c. Homework

as compared to the policy manual of the board of education

40. Why parents needed my help in understanding the modern math problems which I assigned

41. Dr. Rowe's definition of insubordination in a 4/1/74 letter as compared to the definition by the board of education.

42. Dr. Rowe, the Superintendent, was not aware of the board's policy re:

a. Teachers remaining after school from 3-3:30 p.m. to give help

b. Assigning homework

c. Correcting homework

43. Dr. Rowe had:

a. No personal knowledge of me

b. Never observed me in the classroom

c. Relied on Gerald Kerr's more specific statement

d. Contradictions in his testimony

44. Mr. Blum was present at the hearing but was never called as a witness.

45. My continuing to teach even when I was in physical distress:

a. Gerald Kerr's knowledge of this
b. His reaction

46. Contradictions between Gerald Kerr's complaints re: lesson plans and his written evaluation of me

47. Comments of substitute teachers re:

a. My lesson plans
b. The behavior of my class
c. The work of the students

48. Why a substitute teacher would know what to do even if a lesson plan had not been provided (Lesson plans were provided when I was out.)

49. How children were able to keep up in spite of having diagnosed medical problems

50. The school's failure to notify me when a student was suspected of having a hearing problem

51. Mastery Education Learning:

a. Its philosophy
b. Its results
c. How it compares to the method I used

52. Accusation of having "unacceptable teaching patterns" was never detailed as to what those patterns were.

53. All of the parents who testified said that I did an

excellent job teaching their children.

54. Parents' qualifications to comment on my competence as a teacher of their children

55. My class' academic progress

56. Total absence of questions regarding my students' academic progress

57. Confusion between "homework" and "boardwork" and what each actually meant

58. Gerald Kerr's admission to me that the reasons he wanted me to leave were not the ones that he reported

59. Gerald Kerr's more specific statement is filled with inaccuracies, distortions, and fabrications in respect to incidents of which I had personal knowledge.

60. None of Gerald Kerr's charges in the record were substantiated by testimony from either the parents or the administration witnesses at the hearing on August 21, 1974.

61. Examples of Gerald Kerr's inconsistencies, contradictions, fabrications, and distortions, in the record:

a. Using his own statements

b. Using the statements of others

62. I was given permission by Gerald Kerr to have conferences with parents after school. He did not say that their children could not remain in the room.

63. I was never told that parents could not keep their children after school for help. The parents testified that they

stayed with their children after school.

64. Repeated refusal of Dr. Maher, Bristol's superintendent, to provide me the information that I requested until ordered by the F.O.I. Commission

65. Examples from the record of numerous violations by other teachers of what I was accused of:

a. Tardiness
b. Leaving students unattended
c. Keeping students in for recess and after school

66. Inability to respond to the charge of incompetency since it was not defined

67. How my educational philosophy, as opposed to Gerald Kerr's, reflected the policy of the Bristol Board of Education

68. Bristol Policy Manual in effect during the 1973-1974 school year corroborates the policies of the "Greene-Hills Teacher's Hand Book" [sic]

69. Pages from the 1973 Bristol Policy Manual re: promotion and retention

70. The 1971-1974 contract between the board and the Bristol Education Association regarding the amount of time a teacher had to spend in school after the students left

71. Questions on "Possible Retention" form including:

a. Does he complete homework assignments?
b. Have you given child special help after school? Frequently?

72. Legal definition of inefficiency in school cases

73. Examples from the record which show that in many instances I received prior approval to come in late

74. Examples from the record which show that in many cases I provided advance notice when I was going to be late

75. Inaccuracy of the defendant's summary of my alleged lateness regarding:

a. School
b. Special classes
c. Duties

76. Legitimate and reasonable excuses for lateness

77. The effort to downplay the fact that all 13 of the parents who testified at the 1974 hearing supported me. In addition, the defendant called no parents as witnesses. I called all of the parents who had allegedly seen or said something negative about me.

I have read the foregoing, consisting of a total of nine pages, and hereby affirm that it is true and accurate to the best of my knowledge and belief.

STATE OF CONNECTICUT:

: ss Hartford

COUNTY OF HARTFORD:

/s/ Elinor Halpern

Subscribed and sworn to before me, this 24th day of September, 1996.

/s/ Jon L. Schoenhorn
Commissioner of the Superior Court

STATUTORY PROVISIONS

Sec. 10-151. Employment of teachers. Definitions. Notice and hearing on failure to renew or termination of contract. Appeal. (a) For the purposes of this section:

(1) The term "board of education" shall mean a local or regional board of education or the board of trustees of an incorporated or endowed high school or academy approved pursuant to section 10-34, which is located in this state;

(2) The term "teacher" shall include each certified professional employee below the rank of superintendent employed by aboard of education in a position requiring a certificate issued by the state board of education;

(3) The term "continuous employment" means that time during which the teacher is employed without any break in employment as a teacher for the same board of education;

(4) The term "full-time employment" means a teacher's employment in a position at a salary rate of fifty per cent or more of the salary rate of such teacher in such position if such position were full-time;

(5) The term "part-time employment" means a teacher's employment in a position at a salary rate of less than fifty per cent of the salary rate of such teacher in such position, if such position were full-time;

(6) The term "tenure" means:

(A) The completion of thirty school months of full-time continuous employment for the same board of education. For purposes of calculating continuous employment towards tenure, the following shall apply: (i) For a teacher who has not attained tenure, two school months of part-time continuous employment by such teacher shall equal one school month of full-time continuous employment except, for a teacher employed in a part-time position at a salary rate of less than twenty-five per cent of the salary rate of a teacher in such position, if such position were full-time, three school months of part-time con-

tinuous employment shall equal one school month of full-time continuous employment; (ii) a teacher who has not attained tenure shall not count layoff time towards tenure, except that if such teacher is reemployed by the same board of education within five calendar years of the layoff, such teacher may count the previous continuous employment immediately prior to the layoff towards tenure; and (iii) a teacher who has not attained tenure shall not count authorized leave time towards tenure if such time exceeds ninety student school days in any one school year, provided only the student school days worked that year by such teacher shall count towards tenure and shall be computed on the basis of eighteen student school days or the greater fraction thereof equaling one school month.

(B) For a teacher who has attained tenure prior to layoff, tenure shall resume if such teacher is reemployed by the same board of education within five calendar years of the layoff.

(C) Except as provided in subparagraph (B) of this subdivision, any teacher, who has attained tenure with any, one board of education and whose employment with such board ends for any reason and who is reemployed by such board or is subsequently employed by any other board, shall attain tenure after completion of sixteen school months of continuous employment. The provisions of this subparagraph shall not apply if, (i) prior to completion of the sixteenth school month following commencement of employment by such board, such teacher has been notified in writing that his or her contract will not be renewed for the follow school year or (ii) for a period of five or more calendar years immediately prior to such subsequent employment, such teacher has not been employed by any board of education.

(7) The term "school month" means any calendar month other than July or August in which a teacher is employed as a teacher at least One-half of the student school days.

(b) Any board of education may authorize the superintendent to employ teachers. Any superintendent not authorized to employ teachers shall submit to the board of education nominations for teachers for each of the schools in the town or towns in such superintendents

jurisdiction and, from the persons so nominated, teachers may be employed. Such board shall accept or reject such nominations within thirty-five- days from their submission. Any such board of education may request the superintendent to submit multiple nominations of qualified candidates, if more than one candidate is available for nomination, for any supervisory or administrative position, in which case the superintendent shall submit such a list and may place the candidates on such list in the order in which such superintendent recommends such candidates. If such board rejects such nominations, the superintendent shall submit to such board other nominations and such board may employ teachers from the persons so nominated and shall accept or reject such nominations within one month from their submission. The contract of employment of a teacher shall be in writing.

(c) The contract of employment of a teacher who has not attained tenure may be terminated at any time for any of the reasons enumerated in subdivisions (1) to (6), inclusive, of subsection (d) of this section; otherwise the contract of such teacher shall be continued into the next school year unless such teacher receives written notice by April first in one school year that such contract will not be renewed for the following year. Upon the teacher's written request, such notice shall be supplemented within seven days after receipt of the request by a statement of the reason or reasons for such nonrenewal. Such teacher, upon written request filed with the board of education within twenty days after the receipt of notice of termination or nonrenewal, shall be entitled to a hearing either before the board or, if indicated in such request and if designated by the board, before an impartial hearing panel established and conducted in accordance with the provisions of subsection (d) of this section, such hearing shall commence within fifteen days after receipt of such request unless the parties mutually agree to an extension. A board of education may designate a subcommittee of three or more board members to conduct the hearings and submit written findings and recommendations to the board for final disposition in the case of teachers whose contracts are terminated for the reasons stated in subdivision (5) of subsection (d) of this section. The teacher shall have the right to appear with counsel of the teacher's choice at the hearing. A teacher who has not attained tenure and whose contract is terminated for any of the reasons enumerated in subdivisions (1) to (4),

inclusive, of subsection (d) of this section shall have the right toappeal in accordance with the provisions of subsection (f) of this section. No right of appeal shall exist if (A) a teacher who has not attained tenure has received nonrenewable notice prior to April first of a school year or (B) such teacher's contract is terminated for reasons enumerated in subdivisions (5) and (6) of subsection (d) of this section.

(d) The contract of employment of a teacher who has attained tenure shall be continued from school year to school year, except that it may be terminated at any time for one or more of the following reasons: (1) Inefficiency or incompetence; (2) insubordination against reasonable rules of the board of education; (3) moral misconduct; (4) disability, as shown by competent medical evidence; (5) elimination of the position to which the teacher was appointed or loss of a position to another teacher, if no other position exists to which such teacher may be appointed if qualified, provided such teacher if qualified, shall be appointed to a position held by a teacher who has not attained tenure, and provided further that determination of the individual contract or contracts of employment to be terminated shall be made in accordance with either (A) a provision for a layoff procedure agreed upon by the board of education and the exclusive employees' representative organization or (B) in the absence of such agreement, a written policy of the board of education; or (6) other due and sufficient cause. Nothing in this section or in any other section of the general statutes or of any special act shall preclude a board of education from making an agreement with an exclusive bargaining representative which contains a recall provision. Prior to terminating a contract, a board of education shall vote to give the teacher concerned a written notice that termination of such teacher's contract is under consideration and, upon written request filed by such teacher with such board within seven days after receipt of such notice, shall within the next succeeding seven days give such teacher a statement in writing of the reasons therefor. Within twenty days after receipt of written notice by the board of education that contract termination is under consideration, such teacher may file with such board a written request for a hearing. A board of education may designate a subcommittee of three or more board members to conduct hearings and submit written findings and recommendations to the board for final disposition in the case of teachers whose con-

tracts are terminated for the reasons stated in subdivision (5) of this subsection. Such hearing shall commence within fifteen days after receipt of such request, unless the parties mutually agree to an extension, (A) before the board of education or a subcommittee of the board, (B) if indicated in such request or if designated by the board before an impartial hearing panel or, (C) if the parties mutually agree, before a single impartial hearing officer chosen by both parties. If the parties are unable to agree upon the choice of a hearing officer within five days after their decision to use a hearing officer, the hearing shall be held before the board or panel, as the case may be. The impartial hearing panel shall consist of three members appointed as follows: The board of education shall appoint one panel member, the teacher shall appoint one panel member, and those two panel members shall choose a third, who shall serve as chairperson. Within ninety days after receipt of the request for a hearing, the impartial hearing panel, subcommittee of the board or hearing officer, unless the parties mutually agree to an extension, shall submit written findings and a recommendation to the board of education as to the disposition of the charges against the teacher, and shall send a copy of such findings and recommendation to the teacher. The board of education shall give the teacher concerned its written decision within fifteen days of receipt of the written recommendation of the impartial hearing panel, subcommittee or hearing officer. Each party shall pay the fee of the panel member selected by it and shall share equally the fee of the third panel member or hearing officer and all other costs incidental to the hearing. If the hearing is before the board of education, the board shall render its decision within fifteen days after the close of such hearing, and shall send a copy of its decision to the teacher. The hearing shall be public if the teacher so requests or the board, panel or subcommittee so designates. The teacher concerned shall have the right to appear with counsel at the hearing, whether public or private. A copy of a transcript of the proceedings of the hearing shall be furnished by the board of education, upon written request by the teacher within fifteen days after the board's decision, provided the teacher shall assume the cost of any such copy. Nothing herein contained shall deprive a board of education of the power to suspend a teacher from duty immediately when serious misconduct is charged without prejudice to the rights of the teacher as otherwise provided in this section.

(e) The provisions of any special act regarding the dismissal or employment of teachers shall prevail over the provisions of this section in the event of conflict.

(f) Any teacher aggrieved by the decision of a board of education after a hearing as provided in subsection (d) of this section may appeal therefrom, within thirty days of such decisions to the superior court. Such appeal shall be made returnable to said court in the same manner as is prescribed for civil actions brought to said court. Any such appeal shall be a privileged case to be heard by the court as soon after the return day as is practicable. The board of education shall file with the court a copy of the complete transcript of the proceedings of the hearing held by the board of education or by an impartial healing panel for such teacher, together with such other documents, or certified copies thereof, as shall constitute the record of the case. The court, upon such appeal, shall review the proceedings of such hearing and shall allow any party to such appeal to introduce evidence in addition to the contents of such transcript, if it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court, upon such appeal and after a hearing thereon, may affirm or reverse the decision appealed from. Costs shall not be allowed against the board of education unless it appears to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

(1949 Rev., S. 1438; 1949 1955, S. 938d; 1959. P.A.-625; 1961, P.A. 490; 556; February, 1965. P.A. 278; 1969. P.A.532; 1971. P.A. 61: P.A. 73-456, S. 1, 2; P.A. 74-278. S. 3, 5; P.A. 75-435; 75-615; P.A. 76.-436, S. 297. 681; P.A. 78-218, S. 99: 79-280, S. 1. 127; P.A. 79-90; 79-504 S. 1. 4; P.A. 80-354, S. 1-3; P.A. 81-216, S..I. 2; P.A. 82-257; P. A.. 93-399. S.1. 2: P.A. 85-230; 85-343, S. 1. 2, 5: P.A. 86-22 S. 1. 2.)

Supreme Court, U.S.
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No. 97-1621

In The
Supreme Court Of The United States
October Term, 1997

ELINOR HALPERN
Pro Se Petitioner

v.

BRISTOL BOARD OF EDUCATION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF FOR THE BRISTOL BOARD OF EDUCATION IN OPPOSITION

BRIAN CLEMOW
Counsel of Record
VAUGHAN FINN
SHIPMAN & GOODWIN LLP
One American Row
Hartford, CT 06103
(860) 251-5711

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QUESTION PRESENTED

Whether the Connecticut Supreme Court correctly held, after having twice remanded this matter to the Bristol Board of Education for further proceedings, that petitioner's teacher termination satisfied the requirements of due process.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

No. 97-1621

ELINOR HALPERN
Pro Se Petitioner

v.

BRISTOL BOARD OF EDUCATION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF FOR THE BRISTOL BOARD OF EDUCATION IN OPPOSITION

Opinions Below

The opinion of the Connecticut Supreme Court (Pet. App. A1-A4) is reported at 243 Conn. 435, 703 A.2d 1144 (1997). The opinion of the Connecticut Superior Court (Pet. App. A5-A25) is reported at 45 Conn. Sup. 171 (1996).

Jurisdiction

The decision of the Connecticut Supreme Court was entered on December 30, 1997. The petition for a writ of certiorari was filed on March 30, 1998. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

Statement

The extensive history of this lawsuit is described in three decisions by the Connecticut Supreme Court, which has repeatedly considered petitioner's claim that her termination in 1974 violated her due process rights under the state and federal constitutions. *Lee v. Board of Education of the City of Bristol*, 181 Conn. 69, 434 A.2d 333 (1980) ("*Lee*") (Resp. App. at 1a-16a); *Halpern v. Board of Education of the City of Bristol*, 231 Conn. 308, 649 A.2d 534 (1994) ("*Halpern I*") (Resp. App. at 17a-24a); *Halpern v. Board of Education of the City of Bristol*, 243 Conn. 435, 703 A.2d 1144 (1997) ("*Halpern II*"). It is also described in a decision by the Connecticut Superior Court, *Halpern v. Board of Education of the City of Bristol*, 45 Conn. Sup. 171 (1996) (McWeeny, J.), whose analysis was adopted by the state Supreme Court in its third review of petitioner's claims.[1]

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[1] During the pendency of her second appeal, petitioner filed an action in state court against the Board for a writ of mandamus and declaratory relief. That lawsuit was dismissed on the basis of the prior pending action doctrine. *Halpern v. Board of Education of the City of Bristol*, 196 Conn. 647,

1. On August 30, 1974, the Bristol Board of Education (the "Board") voted to terminate the employment of petitioner Elinor Halpern (previously Elinor Lee), a tenured, first-grade teacher in the Bristol, Connecticut, school system. As described in the state Supreme Court's initial decision, the termination was based on evidence that petitioner was chronically late for work; missed work assignments on a regular basis; kept her pupils in at recess and after school contrary to her supervisors' instructions; left her classroom unattended to make personal calls; was warned against speeding in the school parking lot; and provoked a number of transfer requests from parents who were upset by her "unorthodox" teaching methods. *Lee*, 181 Conn. at 71 n.1; 434 A.2d at 335 n.1. In accordance with Connecticut General Statutes § 10-151(b), petitioner's termination was preceded by a hearing, at which she was represented by counsel and was accorded a full opportunity to produce evidence and cross-examine witnesses called by the Board. 181 Conn. at 70-71; 434 A.2d at 335. A transcript was made of this hearing. *Id.*

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495 A.2d 264 (1985). Most recently, petitioner filed an action against the Board in U.S. District Court on February 6, 1998, asserting that she is entitled to back pay and other monetary relief as a result of the Board's alleged violation of her due process and contractual rights. *Halpern v. Bristol Board of Education*, Civil Action No. 308CV00243 (D. Conn.)

The Connecticut Court of Common Pleas dismissed petitioner's appeal from the Board's decision. On review, the Connecticut Supreme Court concluded that Halpern "was afforded adequate notice of the charges made and that the hearing held pursuant to § 10-151(b) . . . complied with the constitutional safeguards." 181 Conn. at 76, 434 A.2d at 337. However, the court held that a tenured teacher discharged for cause under General Statutes § 10-151(b) was entitled, as a matter of due process, to "a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon." 181 Conn. at 79, 434 A.2d at 339. The court remanded the case to the Board for further proceedings consistent with its decision.

2. Upon remand, the Board convened in November, 1980, to consider the transcript and exhibits introduced at the 1974 termination hearing. *See Halpern I*, 231 Conn. 308, 310, 649 A.2d 534, 536 (1994). On the basis of that review, the Board issued "findings and conclusions" that reaffirmed its decision to terminate petitioner's employment. *Id.* Petitioner's appeal of that decision to the Connecticut Superior Court was rejected. But the Connecticut Supreme Court again reversed the trial court's decision and held that further procedures were required in order to comply with its previous mandate. 231 Conn. at 314, 649 A.2d at 537-38. The court directed the Board to adopt, by analogy, the procedures contained in the Uniform Administrative Procedure Act, Connecticut General Statutes § 4-179, by affording petitioner the opportunity to

comment on the Board's proposed determination and to present "briefs and oral argument" to the Board. *Id.*

3. As described in the most recent decision of the Connecticut Superior Court, the Board took a series of steps to comply with the remand. *See* 45 Conn. Sup. 171, 173-77 (1996) (Pet. App. A7-A11). These steps included the following:

a. In early January, 1995, the Board's attorney instructed current members of the Board to review the transcripts and exhibits from the 1974 termination hearing and notified petitioner's attorney of the procedures that the Board proposed to use in order to comply with the remand.

b. The Board held a special meeting on January 25, 1995, at which petitioner and her attorney were present, to consider the record relating to petitioner's termination. After discussing the issues raised by the termination, the members of the Board concluded that a valid basis existed for petitioner's discharge and agreed to prepare proposed findings and conclusions consistent with that determination. The Board also agreed to circulate the draft to petitioner and to offer her the opportunity to respond in writing and orally to the proposed findings and conclusions before reaching a final decision.

c. On February 24, 1995, a draft of the Board's proposed findings and conclusions was sent to petitioner's

attorney, who was invited to submit a written response.[2] At no time did petitioner avail herself of the opportunity to submit a brief or other written response to the Board's draft findings and conclusions.

d. Following an extension of time requested by petitioner, the nine members of the Board met in public session on May 8, 1995, to consider the proposed findings and conclusions and to give petitioner the opportunity to respond orally to them. The meeting was called to order at 7:15 p.m. At the outset of the meeting, petitioner's attorney objected to the absence of a stenographer or recording device. The Board's attorney disputed the statutory basis for such a procedure but advised petitioner that she was free to tape-record the meeting if she chose. Petitioner then proceeded to provide a detailed oral response to the Board's proposed findings and conclusions.

At 8:50 p.m., the meeting was recessed for 15 minutes. When the meeting resumed at 9:05 p.m., petitioner was advised that the meeting would end at 10 p.m. and that she should be prepared to complete her presentation at that time. The Board denied a request by petitioner's counsel to

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[2] Although copies of the proposed and final findings and conclusions are included in petitioner's Appendix at A29-A41, these documents contain numerous typographical errors that do not appear in the originals. A correct copy of the final findings and conclusions is included in respondent's Appendix at 25a-31a.

allow her to continue for as long as she chose, including at additional meetings on later dates. Petitioner continued her presentation until 10 p.m. The chairperson of the Board then asked if any member of the Board wished to comment about the proposed findings and conclusions or petitioner's presentation. No Board member asked to do so. The Board then voted unanimously to adopt the proposed findings and conclusions upholding petitioner's termination.

4. On her third appeal to the Connecticut Superior Court, petitioner argued that the procedures followed by the Board had violated her due process rights, her rights under Connecticut General Statutes § 10-151, and the mandate of the Connecticut Supreme Court. The Superior Court rejected these arguments, holding *inter alia* that the Board's findings supported the termination decision; that the findings provided adequate notice of the nature of the charges against Halpern; that petitioner did not have a statutory right to a transcript of the May 8 meeting and was not prejudiced by the lack thereof; that petitioner had been given an adequate opportunity to respond to the charges against her; and that there was no evidence of a disqualifying bias on the Board's part. *See* 45 Conn. Sup. 171, 180-91 (Pet. App. A14-A25). In a decision issued on December 30, 1997, the Connecticut Supreme Court affirmed the holding of the Superior Court and adopted the decision of that court "as a proper statement of the facts and the applicable law" regarding petitioner's claims. *Halpern II*, 243 Conn. 435, 438 (Pet. App. A4).

ARGUMENT

I. The Petition Involves Well-Established Principles of Law That Have Been Repeatedly Addressed By This Court.

In upholding the validity of the procedures followed by the Board, the courts below applied well-recognized legal principles established by this Court regarding the due process rights that accompany the loss of a constitutionally protected property interest, such as teacher tenure. The lower courts correctly identified the governing legal standards, and there is no conflict among the state courts or the federal circuit courts regarding the nature of these standards. Petitioner's arguments therefore present no question calling for this Court's attention.

In the course of this 24-year legal saga, the Connecticut Supreme Court has repeatedly and carefully considered the state and federal due process rights of a tenured teacher who is facing discharge. In doing so, the state court applied familiar guidelines provided by this Court. The Connecticut Supreme Court recognized in *Lee* that petitioner "had a 'legitimate claim of entitlement' to the continuance of her teaching contract that was protected by the state and federal constitutions." 181 Conn. at 72-73, 434 A.2d at 335-36, citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577-78 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 261-62 (1970). It relied upon this Court's analysis in *Roth* and *Mathews v. Eldridge*, 424 U.S. 319, 334-35

(1976), to conclude that the loss of a tenured position was "substantial." 181 Conn. at 74, 434 A.2d at 336. Analogizing to the termination of a welfare recipient's benefits in *Goldberg v. Kelly* and the revocation of parole and probation considered in *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), the Connecticut Supreme Court identified detailed procedures that the Board was required to follow in the context of petitioner's termination proceeding. 181 Conn. at 78-80, 434 A.2d at 338.

Not only did the Connecticut Supreme Court correctly identify the relevant legal standards, but it bent over backwards in its application of those standards to be solicitous of petitioner's interests. The court twice remanded her case to the Board with directions to supplement the procedures previously provided. In *Lee*, the court required the Board to provide petitioner with an explanation of the reasons for its decision and a summary of the evidence relied upon. In *Halpern I*, the court expanded upon these procedures by requiring the Board to allow petitioner the opportunity to comment on the Board's proposed decision and to present written and oral argument to the deciding officials. Accordingly, the state court has applied this Court's well-established principles in the due process area in a manner that was, if anything, more generous to petitioner than the Constitution requires.

II. The Lower Courts Correctly Applied The Governing Legal Standards.

None of the arguments raised by petitioner suggest that the decision of the Connecticut Supreme Court was incorrect, let alone deserving of this Court's review. Petitioner essentially contends that, on its third review of this case, the state court applied the governing legal standards in a manner that was unfair to her. Such an argument is insufficient to support review by this Court. It is also baseless. As described in the extensive decision of the Superior Court, none of petitioner's legal arguments has merit.

1. Petitioner's principal argument is that she was deprived of due process because the findings and conclusions of the Board were insufficiently specific to apprise her of the nature of the charges against her. Petition at 16-21. In light of this proceeding's extensive history, which includes an evidentiary hearing, this argument strains credulity. Furthermore, the proposed findings and conclusions that petitioner was sent prior to the May 8 public meeting (Pet. App. A29-A34) were highly detailed. As the Superior Court noted, "[t]he proposed findings and conclusion are five pages in length, contain thirteen specific findings and include a weighing and assessment of the evidence." 45 Conn. Sup. at 186. Petitioner had substantial advance notice of these findings. She and her attorney were present at the Board meeting in January, 1995, at which the evidence relating to

the proposed findings and conclusions was discussed; her attorney was also sent a copy of the proposed findings and conclusions more than two months before the public meeting on May 8, 1995. *Id.* at 173-75. Petitioner declined the Board's invitation to submit a written response, which would have enabled her to raise any objections she had to the specificity of the proposed findings and conclusions.

Petitioner contends that the proposed findings were inadequate because they did not identify the "dates or the specific nature of the teacher's acts." Petition at 19-20, quoting *Osborne v. Bullitt County Board of Education*, 415 S.W.2d 607, 609-10 (Ct. App. Ky. 1967) (internal quotations omitted). The "specific nature" of the improper actions was clearly described in the findings, however, which identify a series of inappropriate actions by petitioner, including repeated tardiness, missed assignments, and disregard of her supervisor's instructions. *See* Pet. App. at A30-A32. In addition, the exhibits to the termination hearing, which are referenced in the findings and were available to petitioner, provide "a detailed chronology" of the events identified in the findings. *See Halpern v. Board of Education*, 45 Conn. Sup. at 183.[3] Under these circumstances, the notice provided was

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[3] For example, Exhibit H describes specific events during "a major portion of the 1973-74 school year from September 10, 1973 through March 29, 1974." 45 Conn. Sup. at 183. This chronology identifies:

more than adequate to permit petitioner to respond to the charges against her.

2. Petitioner cannot establish that the failure to transcribe the May 8 meeting was unreasonable, let alone violated her constitutional rights. She does not dispute the holding of the lower court that she had no statutory right to a transcript. Her only argument in support of this contention is that the existence of a transcript would have facilitated judicial review. Petition at 21-22. Petitioner's comments constituted oral argument, however, not evidence that needed to be preserved for a reviewing court. Moreover, as the Superior Court held, she has not identified any prejudice that resulted from the lack of a transcript. 45 Conn. Sup. at 190. Extensive minutes of the May 8 meeting were prepared, which included plaintiff's objections and a detailed summary of her argument. Her counsel conceded at oral argument before the Superior Court that these minutes were accurate.

> twenty-three days when the plaintiff was late for work; three incidents when the plaintiff, during the course of the school day, left her students unsupervised; two occasions when the plaintiff failed to pick up her students from special classes; eight instances of the plaintiff either being late or absent from assigned supervisory duties; and five times when the plaintiff missed or was late for special classes.

Id.

Id.[4] The absence of a transcript therefore had no adverse effect on petitioner's appeal.

3. Petitioner was provided a fully adequate opportunity to participate in the 1995 proceedings, which more than satisfied her constitutional right to have "a voice" in the proceedings. *Halpern I*, 231 Conn. at 314, 649 A.2d at 538. Halpern received the Board's proposed findings and conclusions in late February and was allowed over two months to submit a written response. She chose not to do so. She also chose to make her oral presentation herself, rather than relying on experienced counsel. At the May 8 public meeting, petitioner was permitted to present her oral comments for over two hours. Contrary to her present argument, these comments were not abruptly terminated; after more than an hour of oral presentation, she was informed that she would be allowed an additional 45 minutes to conclude.

Petitioner offers no support for the proposition that she was entitled, as a matter of constitutional right, to an unlimited amount of time to present oral argument. As the trial court stated, "[d]ue process requires fair proceedings, not perfect or exhaustive proceedings. *State v. Daugaard*, 231 Conn. 195, 218, 647 A.2d 342 (1994), *cert. denied*, 513

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[4] Furthermore, if petitioner had truly felt that a transcript was required, she could have availed herself of the Board's offer to let her tape-record the proceeding. *See* 45 Conn. Sup. at 190.

U.S. 1099 (1995)." 45 Conn. Sup. at 187. That petitioner did not marshal her arguments as effectively as she may have wished during her lengthy presentation does not raise a question of constitutional importance.

4. Finally, there is no evidence that the Board's decision was tainted by bias. To the contrary, the record demonstrates that the Board complied with the remand by the Connecticut Supreme Court in a conscientious manner. The Board: (1) involved petitioner's counsel in planning the procedures that would effectuate the remand; (2) deliberated at length on the record at its January 25, 1995, meeting in order to prepare the proposed final decision; (3) afforded Halpern ample time to file a written brief; and (4) heard over two hours of oral argument from petitioner before rendering its decision.

Petitioner argues that the decision is suspect because the Board voted to uphold her termination without further discussion after she had completed her oral presentation. The record contains no evidence, however, that any Board member had a disqualifying interest in this matter. Further, the fact that the Board members did not have any additional comments or questions at the conclusion of the May 8 meeting is hardly surprising. Prior to that meeting, the Board members had individually reviewed the testimony and evidence from the 1974 termination hearing; they had also discussed this evidence in detail at the January 25, 1995, meeting. Their failure to conduct any further discussion at

the May 8 meeting reflects nothing more than their familiarity with issues that they had already exhaustively considered.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Brian Clemow
Counsel of Record
Vaughan Finn
Shipman & Goodwin LLP
One American Row
Hartford, CT 06103
(860) 251-4711

April 29, 1998

No. 97-1621

In The

Supreme Court Of The United States

October Term, 1997

ELINOR HALPERN

Pro Se Petitioner

v.

BRISTOL BOARD OF EDUCATION

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

RESPONDENT'S APPENDIX

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ELINOR LEE *v.* BOARD OF EDUCATION OF THE CITY OF BRISTOL

COTTER, C. J., LOISELLE, BOGDANSKI, PETERS and HEALEY, Js.

The plaintiff tenured teacher appealed to the Court of Common Pleas from the decision of the defendant board of education of the city of Bristol to terminate, under its statutory (§ 10-151 [b]) authority to do so, her contract of employment for inefficiency and insubordination. From the judgment of the Court of Common Pleas dismissing her appeal, the plaintiff appealed to this court claiming that the Court of Common Pleas erred in concluding that she had not been deprived of due process by the board's failure either to state the reasons for its decision or to state the evidence on which it had relied in making that decision. *Held* that the plaintiff, as a tenured teacher dismissed for cause under § 10-151 (b), was, as a matter of due process, entitled to a written statement of the decision reached by the board of education and to a statement of the reasons for the board's determination together with a fair summary of the evidence on which the board had relied in reaching that determination.

Because the meeting at which the plaintiff was afforded a hearing on the question of her termination was attended by a quorum of the actual members of the board, although not by a quorum of the authorized board membership, there being at that time one vacancy on the board, that meeting was not, as she claimed, invalid.

The plaintiff further claimed that the "emergency" board of education meeting at which her contract was terminated was unlawful because the board failed to explain adequately the nature of the emergency. That claim was unavailing since the plaintiff did not demonstrate that her substantive rights had been prejudiced by the holding of the meeting.

Argued January 8—decision released June 3, 1980

Appeal from a decision of the defendant board terminating the plaintiff's contract of employment, brought to the Court of Common Pleas in Hartford County and tried to the court, *Satter, J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Error; further proceedings.*

Joseph Rubin, for the appellant (plaintiff).

Thomas N. Sullivan, with whom, on the brief, was *William R. Connon,* for the appellee (defendant).

Arthur H. Healey, J. This case concerns the termination of a tenured teacher's contract of employment for cause under General Statutes § 10-151 (b). The plaintiff, Elinor Lee, who had been employed by the defendant board of education of the city of Bristol (hereinafter the board) for over four years and, hence, had acquired tenure under General Statutes § 10-151 (b), was discharged by the board on August 30, 1974. The plaintiff appealed from that decision to the Court of Common Pleas, which dismissed the appeal. The appeal to this court followed.

The relevant facts are not in dispute: On April 1, 1974, the plaintiff was informed by the superintendent of schools that the termination of her teaching contract was being considered by the board for inefficiency and insubordination against reasonable rules of the board of education. On April 18, 1974, the plaintiff was notified of the specific charges made against her,[1] and, on August 21, 1974, pursuant to the plaintiff's request, a hearing was held at which the plaintiff was present and represented by counsel. At the hearing, the plaintiff was given full opportunity to cross-examine witnesses called by

[1] Those charges were: (1) She had been late for work almost every week and had failed to heed "instructions" from her superiors concerning this tardiness; (2) she had missed work assignments at least once a week; (3) she had kept pupils in at recess and after school contrary to "instructions" of her superiors; (4) she had left her classroom unattended to make personal phone calls; (5) she had been warned on March 26, 1974, concerning speeding in the school parking lot; and (6) she had caused a number of transfer requests from parents upset by her "unorthodox teaching method."

the board and to produce evidence. The hearing was held before three members of the board, which, at the time of the hearing, was then comprised of five members.[2] A transcript was made of the hearing, which was examined by the two members of the board who were not present at the hearing. The decision to terminate was made by four members of the board, two of whom had not been present at the hearing but had read the transcript.

On appeal, the plaintiff claims that the trial court erred in the following respects: (1) in concluding that the board's failure to state the reasons for its decision or the evidence upon which it relied did not deprive the plaintiff of due process of law; and (2) in concluding that the hearing was conducted during a valid meeting of the board. This last claim is two-pronged: the plaintiff argues that there was no quorum present at the meeting at which the hearing took place, and that the meeting was unlawful because, although it was an emergency meeting, no adequate explanation of the emergency was given.

I

The fourteenth amendment to the United States constitution prohibits any state[3] from depriving any person of "life, liberty, or property, without due process of law." Article one, section eight of our state constitution contains the same prohibition and

[2] The charter of the city of Bristol authorizes a board of education consisting of six members. At the time of the meetings involved in this case, there existed one vacancy on the board.

[3] There is no question but that the action of a local board of education constitutes "state action" for purposes of the federal constitution. See *Terry* v. *Adams*, 345 U.S. 461, 473, 73 S. Ct. 809, 97 L. Ed. 1152 (1953) (Frankfurter, J., concurring); *Murphy* v. *Berlin Board of Education*, 167 Conn. 368, 372, 355 A.2d 265 (1974); *West Hartford Education Assn., Inc.* v. *DeCourcey*, 162 Conn. 566, 573, 295 A.2d 526 (1972).

is given the same effect as the fourteenth amendment to the federal constitution. *Miller* v. *Heffernan,* 173 Conn. 506, 516, 378 A.2d 572 (1977), appeal dismissed, 434 U.S. 1057, 98 S. Ct. 1226, 55 L. Ed. 2d 758 (1978). Our analysis of the plaintiff's claim, therefore, encompasses both provisions.

The property interests protected by the due process clause are diverse and may take many forms. *Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564, 576, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). A teacher who is given by statute the right to continued employment except upon a showing of cause or the bona fide elimination of his position; see General Statutes § 10-151 (b); acquires a property right that is entitled to protection under the due process clause.[4] See *Slochower* v. *Board of Education,* 350 U.S. 551, 556, 76 S. Ct. 637, 100 L. Ed. 692 (1956); cf. *Connell* v. *Higgenbotham,* 403 U.S. 207, 208, 91 S. Ct. 1772, 29 L. Ed. 2d 418 (1971). Thus, the plaintiff had a "legitimate claim of entitlement" to the continuance of her teaching contract that was protected by the state and federal constitutions. See *Board of Regents of State Col-*

[4] Even a nontenured teacher may have a liberty interest consisting of his reputation or honor that entitles him to due process protection upon his threatened termination for cause. *Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564, 573, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). In *Bishop* v. *Wood,* 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976), which involved the discharge of a public employee, the Supreme Court found that, on the facts of that case, because no property interest in continued public employment was created by a state statute, none was recognized by the due process clause; and that, because there was no public disclosure of the reasons for the discharge, no liberty interest was affected. For a discussion of this case and its ramifications see Rabin, "Job Security and Due Process: Monitoring Administrative Discretion Through a Reasons Requirement," 44 Univ. Chi. L. Rev. 60; note, "Democratic Due Process: Administrative Procedure After *Bishop* v. *Wood,*" 1977 Duke L.J. 453.

leges v. *Roth,* supra, 577–78; *Goldberg* v. *Kelly,* 397 U.S. 254, 261–62, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970); cf. *Bishop* v. *Wood,* 426 U.S. 341, 347, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976).

Once a property interest protected by the due process clause is found to exist, the inquiry is directed to the type of procedure mandated by the constitutional prohibitions. The procedure that is due in any given case depends upon the extent to which a person is "condemned to suffer grievous loss." *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed. 2d 817 (1951) (Frankfurter, J., concurring); see *Goldberg* v. *Kelly,* supra, 262–63. "'"Due process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.'" *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961). Instead, due process is a flexible principle that "calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer,* 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); see *Mitchell* v. *W. T. Grant Co.,* 416 U.S. 600, 610, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974). The United States Supreme Court has stated with greater specificity the factors to be considered in deciding what process is due: "[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail." *Mathews* v. *Eldridge*, 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); see Tribe, American Constitutional Law § 10-13. The loss with which the plaintiff is threatened is substantial. See *Delagorges* v. *Board of Education*, 176 Conn. 630, 636, 410 A.2d 461 (1979). Not only is her teaching position her livelihood and a vital source of income, the charges against her, which reflect upon her professional competence and character, implicate her interest in liberty protected by the due process clause of the fourteenth amendment. *Board of Regents of State Colleges* v. *Roth*, supra, 572–73. In view of the substantial interest at stake, we examine the procedures employed to determine whether they comport with the basic principles of due process embodied in our state and federal constitutions.

At the outset, we must determine what statutes were applicable to the plaintiff's termination in 1974. The Uniform Administrative Procedure Act (UAPA); General Statutes §§ 4-166 through 4-189; which was enacted in 1971 and became effective in January, 1972; Public Acts 1971, No. 854; contained a broad definition of "agency."[3] In *Murphy* v. *Berlin Board of Education*, 167 Conn. 368, 355 A.2d 265 (1974), this court considered the scope of the UAPA and concluded that local boards of education were included within the term "state board" used in General Statutes § 4-166 (1) as originally enacted. Id., 373. That determination was based upon "the absence of any indication to the contrary

[3] Public Acts 1971, No. 854 § 1 (1) provided: "'Agency' means each state board, commission, department or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases."

in the statute itself, its legislative history, or our cases." Ibid. That the legislature intended the UAPA to establish a single uniform procedure for administrative agencies covered by the act is evidenced by the broad language of § 4-189 repealing "[a]ny provisions in the general statutes which are inconsistent with [the act]." In *McDermott* v. *Commissioner of Children & Youth Services*, 168 Conn. 435, 445, 363 A.2d 103 (1975), we held that § 4-189 repealed an inconsistent judicial review provision of the State Personnel Act. General Statutes §§ 5-193 through 5-269.

In 1975, after the decision in *Murphy*, however, the legislature amended General Statutes § 4-166 (1) by adding to those persons and bodies expressly excluded from the definition of "agency" any "town or regional board of education." See Public Acts 1975, No. 75-529 § 2. That this amendment reflects the legislature's intended scope of the original definition is apparent from the remarks of Representative James T. Healey, the bill's sponsor. Representative Healey remarked that the amendment was necessary because town and regional boards of education, although local bodies, "are regarded, for certain purposes, as being arms of the State government insofar as they are charged with duty concerning education." See 18 H. R. Proc., Pt. 13, 1975 Sess., p. 6322. "An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act." *Tax Commissioner* v. *Estate of Bissell*, 173 Conn. 232, 246, 377 A.2d 305 (1977); see Sutherland, Statutory Construction (4th Ed.) §§ 22.31, 22.35. We consider the 1975 amendment as construing and clarifying the original scope of § 4-166 (1) and, therefore, a legislative declaration

of the meaning of the original act. We reach this conclusion for several reasons: it was not readily apparent that local or regional boards of education would constitute state boards or agencies under the UAPA as originally enacted; subsections (b) and (f) of § 10-151, the Teacher Tenure Act, regulating procedures that are inconsistent with the UAPA were never repealed; and our decision in *Murphy* was based on the absence of any legislative history or expression to the contrary which, because of the 1975 amendment, is not now the case. Thus, we conclude that the Teacher Tenure Act, and not the UAPA, applies to this case.[6]

We now examine the applicable provisions of the Teacher Tenure Act to determine whether they comply with the modicum of due process required by our state and federal constitutions. The plaintiff does not challenge the sufficiency of the notice and hearing requirements of General Statutes § 10-151 (b). The record discloses that the plaintiff was afforded adequate notice of the charges made and that the hearing held pursuant to § 10-151 (b), at which the plaintiff was represented by counsel, presented evidence and cross-examined witnesses, complied with the constitutional safeguards.[7] Her single claim in this regard is that the board's failure to state the reasons for its decision and the evidence upon which it relied deprived her of due process of

[6] We reach this conclusion notwithstanding the language of *Adamchek* v. *Board of Education*, 174 Conn. 366, 369, 387 A.2d 556 (1978), because in *Adamchek* the legislative history of the 1975 amendment as well as the other factors we have alluded to above were not considered.

[7] We also note that teachers in this state have access to "supervisory records and reports of competence, personal character and efficiency" that are maintained in personnel files relating to their employment by the local or regional boards of education. General Statutes § 10-151a.

law. General Statutes § 10-151 does not specify the form or content of a termination decision of a board of education.[8] We must determine, therefore, to what extent the constitutional due process standard places a greater burden upon a board of education than that set out in § 10-151 (b).

In *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970), the United States Supreme Court identified several elements of due process that must be part of the procedure employed by the state prior to its decision to terminate a welfare recipient's benefits.[9] The court concluded that the recipient is entitled to the following procedure: (1) timely and adequate notice detailing the reasons for a proposed termination; *Goldberg* v. *Kelly*, supra, 267–68; (2) a hearing before an impartial decisionmaker; id., 271; (3) the opportunity to confront and cross-examine adverse witnesses and to present evidence and argument; id., 268–70; (4) the right to be represented by counsel; ibid.; (5) a determination by the decisionmaker that rests solely on the legal rules and evidence adduced at the hearing, which, in turn, requires the decisionmaker to

[8] Where the board itself does not hold the hearing on termination and a panel of three persons does, as provided by General Statutes § 10-151 (b), that panel must "submit in writing its findings and a recommendation to the board of education as to the disposition of the charges against the teacher, and shall send a copy of such findings and recommendation to the teacher." Although a three-member panel was not used here, it is clear from our holding today that unless the board expressly adopts the findings and reasons of the panel, the fact that the panel has made findings and a recommendation does not relieve the board of stating its reasons for acting as it did and the evidence upon which it relied.

[9] In reviewing these elements, it must be borne in mind that two hearings were anticipated under the facts presented in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). The first is a preliminary, pretermination hearing; the second is a more formal post termination hearing. Id., 266–67.

"state the reasons for his determination and indicate the evidence he relied on." Id., 271. The court went on to state that at this preliminary hearing there was no need for the decision to be a "full opinion or even formal findings of fact and conclusions of law." Ibid.

The United States Supreme Court has also recognized a parolee's interest in continued liberty as protected by the due process clause. See *Morrissey* v. *Brewer*, 408 U.S. 471, 481–82, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Thus, his parole may initially be revoked only upon a preliminary determination of probable cause, and finally revoked upon a later hearing at which the following minimum requirements of due process were satisfied: "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." Id., 489. In *Gagnon* v. *Scarpelli*, 411 U.S. 778, 782, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973), the Supreme Court held that the due process requirements established for parole revocation were also applicable to probation revocation proceedings.[10] Cf. *Greenholtz* v. *Inmates of*

[10] The court in *Gagnon* v. *Scarpelli*, 411 U.S. 778, 790, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973), added to the requirements set out in *Morrissey* v. *Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), the right to counsel under certain circumstances.

Nebraska, 442 U.S. 1, 15, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979) (parole board need not specify the particular "evidence" upon which it relies in a determination not to grant parole). Even in prison disciplinary hearings, in which the prisoner is not afforded the right to confront and cross-examine the witnesses testifying against him, the due process clause requires the decisionmaker to prepare a written statement of the evidence relied on and the reasons for the action taken. *Wolff* v. *McDonnell,* 418 U.S. 539, 564–65, 567, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

Those decisions, and their underlying rationale, lead us to the conclusion that a tenured teacher discharged for cause under General Statutes § 10-151 (b) is entitled, as a matter of constitutional law, to a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon. Accord, *Staton* v. *Mayes,* 552 F.2d 908, 915–16 (10th Cir.), cert. denied, 434 U.S. 907, 98 S. Ct. 309, 54 L. Ed. 2d 195 (1977); *McGhee* v. *Draper,* 564 F.2d 902, 911 (10th Cir. 1977); cf. *Mauriello* v. *Board of Education,* 176 Conn. 466, 470–71, 408 A.2d 247 (1979) (decided on other than constitutional grounds); see *State ex rel. Harris* v. *Annuity & Pension Board,* 87 Wis. 2d 646, 675, 275 N.W.2d 668 (1979); Hahn, "Procedural Adequacy in Administrative Decisionmaking: A Unified Formulation," 30 Ad. L. Rev. 467, 517 (1978). This conclusion is based upon the factors identified in *Mathews* v. *Eldridge,* 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and set out above. Not only does a threatened termina-

tion jeopardize a teacher's source of income, like the termination of welfare benefits in *Goldberg*,[11] it may implicate a teacher's professional standing and reputation for competence, efficiency, and integrity and, thus, an important liberty interest. *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 573, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Certainly, the charges made in this case would have such an effect. Moreover, when officials act to deprive a person of a significant property or liberty interest and the reasons therefor are not given, the potential for a determination based on an error of law, mistake, caprice, malice, or discrimination is increased. A requirement that the reasons for the action taken and a summary of the evidence relied upon appear with the decision rendered minimizes the potential for such improper action. Finally, although such a requirement imposes an additional duty upon boards of education, that duty is by no means excessive or unreasonable in view of the liberty or property interests involved. Having carefully considered the charges and all the evidence presented, which is the duty of the board making a termination decision under General Statutes § 10-151 (b), it is hardly an onerous burden to state the reasons for its decision and the evidence upon which it relied. The statement of reasons and a fair summary of the evidence relied upon need not reflect the polish of a judicial opinion. Reasoned and fair decisionmaking, not technical finesse, is guaranteed by the due process standard of the state and federal constitutions. Conclusory language, however, will not suffice. Accord, *Staton* v. *Mayes*, supra, 915–16.

[11] Unlike the deprivation in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970), however, it is not always the case that a teacher derives his sole source of income from his employment.

Our conclusion is also based upon General Statutes § 10-151 (f), which grants a teacher aggrieved by the board's decision the right to judicial review in the Superior Court. On appeal, the court must determine whether the appropriate procedure under the statute and the state and federal constitutions was employed; cf. *Murphy* v. *Board of Education*, 167 Conn. 368, 374–76, 355 A.2d 265 (1974); and whether the evidence relied upon was reliable and substantial and, if believed, sufficient to establish cause under the statute. Cf. General Statutes § 4-183 (g); see *Obeda* v. *Board of Selectmen*, 180 Conn. 521, 523, 429 A.2d 956 (1980); *Tucker* v. *Board of Education*, 177 Conn. 572, 582, 418 A.2d 933 (1979); 63 Am. Jur. 2d, Public Officers and Employees § 202; annot., 4 A.L.R.3d 1090; note, "Teacher Tenure in Connecticut: Due Process Rights and 'Do Process' Responsibilities," 8 Conn. L. Rev. 690, 702 (1976). Effective judicial review of administrative decisions requires that such decisions be based upon substantial evidence and proper reasons. See *Baltimore & Ohio R. Co.* v. *Aberdeen & Rockfish R. Co.*, 393 U.S. 87, 92, 89 S. Ct. 280, 21 L. Ed. 2d 219 (1968); *USV Pharmaceutical Corporation* v. *Secretary of Health, Education & Welfare*, 466 F.2d 455, 461–62 (D.C. Cir. 1972); *In re Boston & Providence Railroad Corporation*, 428 F.2d 159, 164 (1st Cir. 1970); *Great Lakes Screw Corporation* v. *N.L.R.B.*, 409 F.2d 375, 379, (7th Cir. 1967); *Morris* v. *Gressette*, 425 F. Sup. 331, 340–41, affirmed, 432 U.S. 491, 97 S. Ct. 2411, 53 L. Ed. 2d 506 (1976); *Feinson* v. *Conservation Commission*, 180 Conn. 421, 428, 429 A.2d 910 (1980); *A.P. & W. Holding Corporation* v. *Planning & Zoning Board*, 167 Conn. 182, 186, 355 A.2d 91 (1974); *Board of Education* v. *Ingels*, 75

Ill. App. 3d 334, 337, 394 N.E.2d 69 (1979); Davis, Administrative Law Text (3d Ed.) § 16.03; see also Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267, 1292 (1975). A court reviewing an administrative determination cannot engage in surmise and conjecture to determine whether the decision was lawfully reached.[12] See *SEC* v. *Chenery Corporation*, 332 U.S. 194, 196–97, 67 S. Ct. 1575, 91 L. Ed. 1995 (1947); *Franklin* v. *Shields*, 569 F.2d 784, 797 (4th Cir. 1977). Thus, under the Model State Administrative Procedure Act, an agency is required to prepare "findings of fact and conclusions of law, separately stated." 13 Uniform Laws Annot., State Administrative Procedure § 12 (1980).[13] A similar requirement appears in the Federal Administrative Procedure Act; 5 U.S.C.

[12] In this case, for example, where two reasons establishing cause under General Statutes § 10-151 (b) were alleged but no statement of reasons was given by the board, it is impossible for a reviewing court to ascertain whether one or both grounds were found to exist. Moreover, absent a statement of reasons and a fair summary of the evidence relied upon, a reviewing court is unable to determine what evidence was relied upon to establish cause under the statute and, therefore, whether such evidence was sufficient; see *Tucker* v. *Board of Education*, 177 Conn. 572, 576, 582, 418 A.2d 933 (1979); and whether it was appropriate for the board to consider such evidence; see *McDermott* v. *Commissioner of Children & Youth Services*, 168 Conn. 435, 442–43, 363 A.2d 103 (1975); *Murphy* v. *Berlin Board of Education*, 167 Conn. 368, 375–76, 355 A.2d 265 (1974).

[13] It is interesting to note that although the Connecticut Uniform Administrative Procedure Act; General Statutes §§ 4-166 through 4-189; derives from the Model State Administrative Procedure Act, there is currently no provision in our act like § 12 of the model act. When originally enacted, § 4-180 of our UAPA contained a requirement that the agency set out its findings of fact and conclusions of law in its final decision. See General Statutes § 4-180 (Rev. to 1972). This language was deleted from the act in 1973. See Public Acts 1973, No. 73-620 § 17. Notwithstanding, other provisions of the act reinforce the conclusion that findings of fact and conclusions of law, separately stated, must be made. See General Statutes §§ 4-177 (g) and 4-183 (d).

§ 557 (c); and has been adopted with "remarkable uniformity" in nearly all state courts, irrespective of a statutory requirement. Davis, Administrative Law Text (3d Ed.) § 16.03; see also *State ex rel. Harris* v. *Annuity & Pension Board,* 87 Wis. 2d 646, 275 N.W.2d 668 (1979). Once the legislature has afforded a teacher dismissed for cause the right to judicial review of that determination, it is for the courts to ensure that that right is meaningfully protected.

II

The last claim raised by the plaintiff requires little discussion. The plaintiff's argument that the meeting of the board at which the hearing was conducted was illegal because a quorum was not present is without merit. The authorized membership of the Bristol board of education under the city charter was six. At the time of the plaintiff's termination of contract there was one vacancy of the board. The meeting at which the plaintiff was afforded a hearing, was held by three members of the board. The plaintiff argues that because the number of members present at that meeting was insufficient to constitute a quorum of the authorized membership of the board, the meeting was unlawful and the action taken pursuant thereto of no effect. The plaintiff did not object to the meeting on this basis at the time it was held. Moreover, she has presented this court with no Connecticut authority for the proposition that a quorum is determined from the number of authorized members of a public body rather than the number of actual members at the time action is taken. In the absence of a statute relating to this public body; cf. *Steiner, Inc.* v. *Town Plan & Zoning Commission,* 149 Conn. 74, 175 A.2d 559 (1961); we

see no reason why a meeting held by a quorum of the actual members of the board should be deemed invalid. See *State* v. *Orr,* 61 Ohio 384, 56 N.E. 14 (1899); 56 Am. Jur. 2d, Municipal Corporations § 169; 67A C.J.S., Parliamentary Law § 6 b; annot., 43 A.L.R.2d 698 § 7. Furthermore, the meeting of the board at which the plaintiff's contract actually was terminated was attended by a quorum of both the authorized and the actual number of board members.

The plaintiff's argument that the August 30, 1974 meeting at which her contract was terminated was unlawful because, although it was an emergency meeting, no adequate explanation of the emergency was given is also unavailing. Even were we to assume that the explanation given for the emergency meeting was inadequate,[14] the plaintiff has not demonstrated that holding the board meeting at that time affected her substantive rights. Nor did she make any objection to the procedure followed at that time. Absent a showing that any alleged irregularity in administrative proceedings was prejudicial to the substantive rights of the appellant, no corrective action is warranted by the courts. Cf. *Gelinas* v. *Nelson,* 165 Conn. 33, 40–41, 327 A.2d 565 (1973).

There is error, the judgment is set aside and the case is remanded with direction to return the case to the board for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

[14] The meeting was held on August 30, 1974, to consider the termination of the plaintiff's teaching contract. It is readily apparent that the decision regarding the plaintiff's continued employment should have been made, if at all possible, prior to the commencement of the new school year.

ELINOR HALPERN *v.* BOARD OF EDUCATION OF THE CITY OF BRISTOL
(14975)

PETERS, C. J., and CALLAHAN, NORCOTT, KATZ and PALMER, Js.

The plaintiff tenured teacher, in 1974, had been discharged for cause by the defendant board of education of the city of Bristol pursuant to the Teacher Tenure Act (§ 10-151). On her appeal, *Lee* v. *Board of Education* (181 Conn. 69), this court determined that due process entitled her to a written statement of the decision, the reasons for the determina-

tion, and a fair summary of the evidence relied upon by the board. On remand from this court for further proceedings, a newly constituted board reconsidered her termination in 1980, and reaffirmed the earlier decision to discharge the plaintiff and issued findings and conclusions in support of its determination. The plaintiff then appealed that decision to the trial court, which rendered judgment in favor of the board, and the plaintiff further appealed claiming that the actions of the board in making its 1980 determination on the basis of the 1974 record, without conducting a new termination hearing, violated her statutory and constitutional rights, as well as the mandate of this court's remand order. *Held:*

1. The plaintiff could not prevail on her claim that she was statutorily entitled to a new termination hearing, this court having previously concluded that her statutory rights had not been violated; the mandate for further proceedings did not direct a new hearing under the statute.
2. This court having concluded in its earlier decision that the plaintiff had established a violation of her constitutional rights, the board and the trial court were required to construe this court's mandate for vindication of those rights in light of the actual circumstances at the time the remand was to be implemented in 1980 by the newly constituted board. Accordingly, because the plaintiff had been deprived of any meaningful ability to participate in the newly constituted board's remediation of her constitutional rights, the matter was again remanded to the board for futher proceedings to determine whether there are grounds for the plaintiff's termination and to specify the evidence supporting the board's determination; further, the board was directed to prepare a "proposed final decision" and to afford the plaintiff and other interested parties an opportunity to respond to that proposal, including the right to file exceptions and to present briefs and oral argument to the board.

Argued September 21—decision released November 8, 1994

Appeal from a decision by the defendant terminating the plaintiff's employment as a tenured teacher, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and tried to the court, *Maloney, J.*; judgment for the defendant, from which the plaintiff appealed. *Reversed; further proceedings.*

Jon L. Schoenhorn, with whom, on the brief, was *Christine M. Fiedler,* for the appellant (plaintiff).

Thomas N. Sullivan, for the appellee (defendant).

William J. Dolan filed a brief for the Connecticut Education Association as amicus curiae.

PETERS, C. J. The dispositive issue in this administrative appeal is the scope of our mandate "for further proceedings consistent with [our] opinion" in *Lee* v. *Board of Education*, 181 Conn. 69, 84, 434 A.2d 333 (1980). Since 1974, the plaintiff, Elinor Halpern, formerly Elinor Lee, has challenged the termination of her contract as a tenured teacher by the defendant board of education of the city of Bristol (board).[1] In *Lee*, we held that the board had properly conducted a termination hearing in accordance with the statutory requirements of the Teacher Tenure Act; General Statutes § 10-151; but had violated the constitutional requirements of procedural due process by failing to provide the plaintiff with "a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon." Id., 79.

Pursuant to our remand, the board convened in November, 1980, to consider the transcript and the exhibits introduced at the 1974 termination hearing. On the basis of that documentary review, the board reaffirmed its decision to terminate the plaintiff's employment and issued findings and conclusions in support of its determination. The plaintiff appealed that decision to the trial court, which rendered a judgment in favor of the board. The plaintiff then appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and General Statutes § 51-199 (c). We reverse the judgment of the trial court.

[1] The inordinate delays in the adjudication of this case reflect credit on no one. The record demonstrates that the board acted promptly in response to our remand. Thereafter, the plaintiff sought simultaneously to pursue an action for a declaratory judgment and a writ of mandamus as an alternative to her administrative appeal. That alternative remedy was not conclusively determined to be unavailable to the plaintiff until this court's decision in *Halpern* v. *Board of Education*, 196 Conn. 647, 495 A.2d 264 (1985). Review of the plaintiff's administrative appeal was then apparently delayed by an inability to locate the administrative record for a significant period of time.

The gravamen of the plaintiff's present appeal is that the members of the board that reconsidered her termination in 1980, could not validly conduct the "further proceedings" ordered by this court because none of them had been a member of the board at the time of the original termination proceedings in 1974. The plaintiff maintains that the actions of the newly constituted board in making its determination on the prior record, without conducting an entirely new hearing, violated: (1) her statutory rights; (2) her constitutional rights; and (3) the mandate of our remand order.[2] Although we disagree that a new hearing is required, we agree that the special circumstances of this case warrant a more expansive interpretation of our mandate than it received from the board or from the trial court.

Well established principles govern further proceedings after a remand by this court. "In carrying out a mandate of this court, the trial court is limited to the specific direction of the mandate as interpreted *in light of the opinion*. . . . This is the guiding principle that the trial court must observe. . . . Compliance means that the direction is not deviated from. The trial court cannot adjudicate rights and duties not within the scope of the remand. . . . It is the duty of the trial court on remand to comply strictly with the mandate of the appellate court according to its true intent and meaning. No judgment other than that directed or permitted by the reviewing court may be rendered, even though it may be one that the appellate court might have directed. The trial court should examine the mandate and *the opinion of the reviewing court and proceed in conformity with the views expressed therein*. . . ." (Citations omitted; emphasis in original;

[2] The plaintiff has not challenged the conclusion of the trial court that the evidence adduced at her termination hearing was sufficient to support the findings of the board.

internal quotation marks omitted.) *West Haven Sound Development Corp.* v. *West Haven*, 207 Conn. 308, 312, 541 A.2d 858 (1988); *Wendland* v. *Ridgefield Construction Services, Inc.*, 190 Conn. 791, 794–95, 462 A.2d 1043 (1983); *State* v. *Avcollie*, 188 Conn. 626, 643, 453 A.2d 418 (1982), cert. denied, 461 U.S. 928, 103 S. Ct. 2088, 77 L. Ed. 2d 299 (1983); *Nowell* v. *Nowell*, 163 Conn. 116, 121, 302 A.2d 260 (1972).

Applying these principles to the circumstances of this case, we are persuaded that the plaintiff cannot prevail on her claim that she is entitled, as a matter of statutory right, to a new termination hearing. In our prior decision, we concluded that the plaintiff's statutory rights had not been violated. *Lee* v. *Board of Education*, supra, 181 Conn. 76–77. Accordingly, our mandate for further proceedings did not direct a new hearing under the statute. Indeed, a contrary mandate would have required reconciliation with our holding in *Gervasi* v. *Town Plan & Zoning Commission*, 184 Conn. 450, 452–53, 440 A.2d 163 (1981), that we do not have unlimited authority to order new administrative hearings.

The terms of our mandate necessarily reflected, however, our conclusion that the plaintiff had established a violation of her constitutional rights by reason of the board's failure to adopt a statement of the grounds for her termination and the evidence supporting that termination. The conclusion that the board's 1974 actions had infringed the plaintiff's constitutional rights cannot now be relitigated. The only question that remains is what procedural vehicle we contemplated by our mandate for further proceedings to vindicate those rights. As far as the present record shows, although our judgment was rendered six years subsequent to the plaintiff's termination hearing, the parties never sought clarification of the terms of our mandate. The board and the trial court were required, therefore, to construe

our mandate for vindication of the plaintiff's constitutional rights in light of the actual circumstances at the time the remand was to be implemented. "We have rejected efforts to construe our remand orders so narrowly as to prohibit a trial court from considering matters relevant to the issues upon which further proceedings are ordered that may not have been envisioned at the time of the remand. *Blaker* v. *Planning & Zoning Commission,* 219 Conn. 139, 592 A.2d 155 (1991). So long as these matters are not extraneous to the issues and purposes of the remand, they may be brought into the remand hearing." *Cioffoletti* v. *Planning & Zoning Commission,* 220 Conn. 362, 369, 599 A.2d 9 (1991).

The relevant circumstances in this case necessarily include the fact that, in 1980, the members of the board who were charged with implementing our remand order included no one who had participated in the 1974 hearings concerning the plaintiff's termination. We are confident that the board members attempted to discharge their responsibilities in a conscientious manner and that they read with care the documentation that was available to them. Nonetheless, we are persuaded that the procedure employed by the board deprived the plaintiff of any meaningful ability to participate in the board's remediation of her constitutional rights.[3] That was not the intent of our mandate. Further proceedings are therefore required.

[3] Because our focus is on a remand subsequent to a determination that the plaintiff's constitutional rights had been violated, we need not decide whether, as the board suggests, contested administrative cases constitutionally can be adjudicated, ab initio, by agency members who have not had the opportunity personally to observe the witnesses, in the absence of procedures equivalent to those mandated in this opinion. Therefore, we do not decide what precedential value to assign the cases from other jurisdictions cited by the board. See, e.g., *Utica Mutual Ins. Co.* v. *Vincent,* 375 F.2d 129, 131–34 (2d Cir. 1967); *Lewandoski* v. *Vermont State Colleges,* 142 Vt. 446, 451–53, 457 A.2d 1384 (1983).

To eliminate any ambiguity in our present order of remand, we direct the trial court to set aside its judgment and to remand the case to the board to determine whether there are grounds for the plaintiff's termination and to specify the evidence that supports its determination. In order to provide the plaintiff with a voice in these proceedings, we direct the board to adopt, by analogy, the procedure specified by the Uniform Administrative Procedure Act in General Statutes § 4-179.[4] That section requires, in somewhat comparable circumstances, the preparation of a "proposed final decision," and affords to interested parties the opportunity to comment on that proposal by filing exceptions and presenting briefs and oral argument to the officials who are to render the decision. We have held that the opportunity to respond to a "proposed final decision" is a constitutionally adequate safeguard of the due process rights of the parties whose interests are being adjudicated in a contested case. *Pet* v. *Dept. of*

[4] General Statutes § 4-179 provides: "AGENCY PROCEEDINGS. PROPOSED FINAL DECISION. (a) When, in an agency proceeding, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

"(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision.

"(c) Except when authorized by law to render a final decision for an agency, a hearing officer shall, after hearing a matter, make a proposed final decision.

"(d) The parties and the agency conducting the proceeding, by written stipulation, may waive compliance with this section."

We direct the board to adopt this procedure in the special circumstances of this case by analogy only, as we recognize that the Uniform Administrative Procedure Act defines the term "agency" to exclude "town or regional boards of education." General Statutes § 4-166 (1); see *Neyland* v. *Board of Education*, 195 Conn. 174, 177–78 and n.5, 487 A.2d 181 (1985).

Health Services, 228 Conn. 651, 672, 638 A.2d 6 (1994). The board is therefore directed in this case to prepare such a "proposed final decision," and thereafter to afford the plaintiff and other interested parties the opportunity for appropriate responses thereto, including the right to file exceptions and to present briefs and oral argument to the board. After due consideration of these responses, the board is then authorized to adopt a final decision including the requisite findings concerning the propriety of the termination of the plaintiff's tenure as a teacher in 1974.

The judgment of the trial court is reversed and the case is remanded to that court with direction to remand the case to the board for further proceedings in accordance with the mandate contained in the immediately preceding paragraph.

In this opinion the other justices concurred.

BRISTOL BOARD OF EDUCATION

In the Matter of the Termination of Employment of
Elinor Lee Halpern

FINDINGS AND CONCLUSIONS

This matter comes before the Board for the third time in more than twenty years, as a result of a decision by the Connecticut Supreme Court in the fall of 1994. While the history of this case is spelled out in some detail in that decision, the following brief summary may be helpful.

On August 30, 1974, the Board (as it was then constituted) held a hearing on a recommendation of the administration that the contract of employment of Elinor Lee (now Halpern) be terminated. Following a full hearing where each party had the opportunity to present witnesses and exhibits, the Board voted in favor of termination. Following judicial appeals, the case was remanded to the Board in 1990, with direction to issue a written decision including findings of fact and conclusions of law. On November 12, 1980 the Board (as then constituted) issued such a decision, affirming Ms. Halpern's termination of employment.

Following another series of judicial appeals, the case was once again remanded to the Board, with direction to permit Ms. Halpern input into the decision-making process, by issuing proposed findings and conclusions and offering Ms. Halpern an opportunity to submit oral and written argument before a final decision is adopted.

Pursuant to this directive, the members of the Board

as presently constituted reviewed the 1973 hearing transcript and exhibits, and met on January 25, 1995 in open session to discuss their views. The Chairman of the Board, in consultation with the Board's counsel, prepared proposed findings and conclusions, reflecting the views expressed by the members of the Board at the January 25 meeting. The proposed findings and conclusions were disseminated to the members of the Board and to Ms. Halpern simultaneously, under cover letter dated February 24, 1995.

By that letter, Ms. Halpern was provided an opportunity to submit written argument regarding the proposed findings and conclusions, but no such material was submitted. Ms. Halpern was also offered the opportunity to present oral argument at a meeting of the Board called for such purpose. Originally scheduled for March 28, 1995, this meeting was postponed at Ms. Halpern's request for several weeks, and was eventually held on May 8, 1995.

Following approximately three hours of oral argument by Ms. Halpern and her attorney, the Board voted unanimously to adopt the proposed findings and conclusions as the Board's final decision. Those findings and conclusions are as follows:

Findings of Fact

1. In the 1973-74 school year, Elinor Lee was employed as a teacher in the Bristol Public Schools, and was assigned to a first grade class at Greene-Hills School.

2. Based primarily on concerns about her performance during the 1973-74 school year expressed by her principal, Gerald T. Kerr, and by the Assistant

Superintendent for Personnel, Constant W. Blum, Ms. Lee was notified by the Superintendent of Schools, Dr. William F. Rowe, that termination of her contract was under consideration by the Board of Education.

3. At the hearing before the Board of Education on August 21, 1974, both Ms. Lee and the administration (designated in the transcript as the "City") were represented by counsel; both presented witnesses who testified under oath and were subject to cross-examination; and both presented documentary evidence (Teacher Exhibits 1-4 and City Exhibits A-H).

4. The administration's reasons for recommending termination were grouped under two general categories: "Inefficiency - Breach of Contract Concerning the Absenteeism and Tardiness of Subject," and "Insubordination and Unacceptable Teaching Patterns." Numerous examples under each category were detailed in City Exhibit H. In Teacher Exhibit 1, some of these examples were admitted and some were denied, but in most cases Ms. Lee's response consisted of an excuse or explanation for her behavior.

5. On August 20, 1973, Mr. Kerr directed Ms. Lee in writing not to require or permit children to remain after school, "with or without parental permission"; not to require or permit children "to stay in during recess or noon hour to complete homework"; and not to hold children responsible for completing work taken home (City Exhibit A).

6. On October 23, 1973, Mr. Blum directed Ms. Lee to be on duty "no later than 8:40 a.m. on each school day"; to dismiss all of her class promptly at 3:00 p.m. each day so they "leave school a few minutes

thereafter" and to get specific permission from Mr. Kerr for any exceptions; to assign no homework "for which a required return is mandated"; and "never to leave your class unattended" (City Exhibit D).

7. On December 6, 1973, Dr. Rowe reaffirmed these directives in writing (City Exhibit E).

8. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee did not report for duty by 8:40 a.m. as required.

9. On numerous occasions during the 1973-74 school year, Ms. Lee was tardy or absent from her assigned duty.

10. On numerous occasions during the 1973-74 school year, Ms. Lee failed to send or bring her students to special classes when scheduled.

11. With respect to many of the occasions referenced in paragraphs 8 through 10 above, Ms. Lee offered no satisfactory excuse or reasonable explanation. With respect to those instances where Mr. Kerr's assertions were contradicted by Ms. Lee, the former generally carry more weight than the latter because they are supported by Mr. Kerr's contemporaneous notations.

12. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee required or permitted her first grade students to remain in the classroom during recess period to complete assigned work, or to remain in the classroom long after 3:00 p.m. without permission from Mr. Kerr.

13. There is evidence that on various occasions during the 1973-74 school year, including some occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee assigned work which children were required to complete at home. Although this evidence is largely second-hand (parental reports, etc.) it is not specifically denied by Ms. Lee.

Conclusions:

The Board recognizes that in most employment relationships there are both positive and negative aspects, and this case presents no exception to the rule. The evidence indicates Ms. Lee was a dedicated and hard-working teacher. Some of the parents who testified in her behalf were very complimentary. Apparently there were some children who responded positively to her particular teaching style.

It is also entirely possible that some of Ms. Lee's difficulties with the administration resulted not from incompetence or negligence, but rather from a difference in philosophy or approach. The picture that emerges from the record is one of a teacher who "marches to her own drummer." In certain other settings, these qualities might not be disadvantageous, in fact quite the contrary. However, in the context of a first grade teaching position in the Bristol Public Schools, Ms. Lee's positive qualities were outweighed by her negative ones.

The fact that she was repeatedly late for school, usually with no advance notice, created both educational and safety problems for the administration. When she failed to get children to special classes on time (or at all), she not only deprived them of educational opportunities, but disrupted the schedules of other professionals in the

school. When she missed scheduled supervisory duties, she again put children at risk.

Her excuses for these repeated failures were simply inadequate. "My alarm clock didn't work," or "the clock in my classroom is incorrect," or "I couldn't find my car keys" are explanations one might expect from a teenager, not a responsible adult professional -- at least not on multiple occasions. In her position, it was reasonable for the administration to expect her to be where she was supposed to be, and on time. While everyone makes mistakes occasionally, hers were beyond all reasonable proportions.

With respect to keeping first-graders after school, or assigning them homework, the issue is not one of inefficiency or incompetence, but rather insubordination. However valid Ms. Lee may have felt her approach to be, she had been instructed in writing not to engage in these practices. Although there are indications in the record that she made some attempts to address concerns expressed by the administration, the bottom line is that she never fully complied with their directives.

When one accepts a job, one must also accept the policies and procedures adopted by management. The principal is responsible for running the school, and when Mr. Kerr instructed her to avoid certain methods of instruction, Ms. Lee was obligated to comply. The fact that some parents praised her methods is beside the point, especially since other parents asked to have their children removed from her class.

There can be no doubt that Ms. Lee was provided with ample notice of what was expected of her. Not only was she given crystal clear instructions by her principal

before the start of the 1973-74 school year, they were reinforced by written directives from the Assistant Superintendent and Superintendent a few months later. It appears from the record that Ms. Lee's problems persisted even after she was notified that termination of her contract was under consideration.

The Board concludes that Ms. Lee's chronic failure to report to work on time, as well as her repeated failure to perform supervisory duties as scheduled or get students to special classes as scheduled, continued with such frequency and over such a period of time as to constitute inefficiency or incompetence. The Board also concludes that Ms. Lee's failure to stop assigning homework to her first grade students, and especially her failure to heed administrative directives to dismiss children at 3:00 p.m., were sufficiently significant and serious to constitute insubordination.

Again, the Board recognizes Ms. Lee's many positive attributes, the support she enjoyed from several parents, and the efforts she apparently made to address some of the administration's concerns. However, on balance it is the Board's unanimous conclusion that there was due and sufficient cause for the termination of Ms. Lee's contract of employment.

Dated this 22nd day of May, 1995

Bristol Board of Education

By [Signed]

Richard M. Croce
Chairman